

## Navigating a stay-at-home order: Is your business non-essential?



Michael W. Wise, Teresa Metcalf Beasley, Kelsey M. Smith | Wednesday, March 25, 2020

### ***Updated April 2, 2020***

In an attempt to stop the rapid spread of COVID-19, several states, counties and cities have issued mandatory “shelter-in-place”/“stay-at-home” orders. The orders, issued by either the state’s governor or department of health, generally require all individuals to remain in their residences when possible and that all nonessential businesses cease operations. Although the orders restrict certain movement, each order does allow residents to continue performing essential activities such as grocery shopping, seeking health care, caring for family members and friends, or shopping for supplies to work from home.

#### **Identification of essential businesses and critical infrastructure**

The basis for almost all of these orders is a March 19, 2020 memorandum issued by the Homeland Security’s Cybersecurity & Infrastructure Security Agency (CISA). The document, “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,” was created to assist state and local officials as they determine which “sectors, sub-sectors, segments, or critical functions [should] continue normal operations.” The memo recognizes that state and local authorities are “ultimately in charge of implementing and executing response activities” but does provide a list of workers and industries that are considered essential to continued critical infrastructure viability, such as construction, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement and

## Navigating a stayathome order Is your business non

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public works. State and local authorities are encouraged to “use their own judgment” in implementing directives and guidance but the memo stresses that “all decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.”

### Identifying essential critical infrastructure workers

CISA issued the following list of critical sectors and workers to assist in identifying important areas that should be considered by state and local authorities when responding to the COVID-19 crisis:

1. Healthcare and public health
2. Law enforcement, public safety, and first responders
3. Food and agriculture
4. Energy
5. Water and wastewater
6. Transportation and logistics
7. Public works
8. Communications and information technology
9. Other community based government operations and essential functions
10. Critical manufacturing
11. Hazardous materials
12. Financial services
13. Chemical
14. Defense industrial base

CISA stresses that the above list is not exhaustive and encourages states and local authorities to consider their own communities and residents when implementing stay-at-home or shelter-in-place orders.

### State definitions of “essential business”

Since the CISA guidelines were released numerous states have issued stay-at-home and shelter-in-place orders. Virtually all of orders referenced the CISA guidelines and most states used the guidelines as the foundation of their respective orders. The following list identifies all cities, counties and states which have issued stay-at-home orders since March 26 and identifies how those orders incorporate CISA guidelines.

- **Alaska** – Governor Dunleavy issued a COVID-19 Health Mandate on March 27 mandating all individuals and businesses, unless engaged in essential business activities, to remain at their place of residence and practice social distancing. The mandate directly incorporates CISA guidelines and includes similar businesses and workers as essential, including healthcare operations, essential infrastructure, financial services sector, first responders, essential governmental functions, and other businesses such as grocery stores, gas stations, newspapers and hardware stores.
- **Arizona** – The “Stay Home, Stay Healthy, Stay Connected” order issued by Governor Ducey prohibits individuals from leaving their place of residence except to conduct or participate in essential activities, essential functions, or utilize essential businesses. A separate order further defines essential services and businesses to include healthcare and public health operations, human services operations, essential infrastructure operations, essential governmental functions, and other essential businesses such as grocery stores, pharmacies, financial institutions, critical trades, mail services and funeral services. Neither order references CISA guidelines.
- **Birmingham, Alabama** – Mayor Randall Woodfin issued a shelter in place order for the entire city of

## Navigating a stayathome order Is your business non

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Birmingham. The Mayor's order does not reference CISA guidelines but references the Jefferson County Department of Health's essential businesses list and lists additional employees and businesses that are excluded, including public safety employees, persons employed by utility companies, persons providing emergency and hospital services, grocery stores, hospitals, pharmacies, financial institutions and gas stations.

- **California** – Gov. Gavin Newsom's order directs all individuals to stay home except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined in the CISA memo. Additionally, on March 22, the California State Public Health Officer published a list of "Essential Critical Infrastructure Workers" which identifies essential workers in the same critical infrastructure sectors provided by CISA. For example, under Other Community-based Government Operations the California list includes several types of businesses and employees, including building security staff, elections personnel, weather forecasters, construction workers, and laundromats.
- **Charleston, South Carolina** – Under Mayor John Tecklenburg's stay-at-home order individuals are ordered to stay in their homes unless working at a business that provides essential services. Essential services include health care operations, infrastructure operations, manufacturing operations, essential retail, news media, financial institutions, construction and defense operations.
- **Colorado** – The stay-at-home order issued by Governor Jared Polis directs the Executive Director of the Department of Public Health & Environment to identify which businesses are considered critical. Under the Public Health Order, critical business means healthcare operations, critical infrastructure, critical manufacturing, critical retail, critical services such as waste management and child care, news media, financial institutions, construction and defense.
- **Connecticut** – The stay-at-home restriction issued by Gov. Ned Lamont encompasses all critical infrastructure sectors as defined by CISA and those identified by the Connecticut Department of Economic and Community Development (DECD). The DECD's list of essential businesses includes medical marijuana dispensaries and producers, airports, ammunition stores, and liquor stores.
- **Delaware** – The order issued by Gov. John Carney utilizes the CISA memo for guidance but also provides an extensive list of businesses that are considered essential, including hospital and laboratory personnel, public safety employees, workers supporting grocery stores or pharmacies, construction, and employees involved in information technology.
- **District of Columbia** – Mayor Bowser issued a stay-at-home order on March 30, ordering all individuals living in Washington, DC to stay at their place of residence. Individuals may leave their residences to work at essential businesses. The Mayor's order regarding essential businesses is based on the guidance provided by CISA and includes businesses such as hospitals, medical marijuana dispensaries, grocery stores, senior centers, shelters, newspapers, banks, gas stations, taxis, and hotels.
- **Florida** – After multiple cities and counties issued stay-at-home orders, Governor Ron DeSantis issued a state-wide stay-at-home order on April 1. The Governor's order references the CISA memo and guidelines and authorizes individuals to leave their residences when participating in essential services. Businesses and services authorized to remain open include hospitals, law enforcement and public safety, government facilities, critical manufacturing, financial and lending institutions, and grocery stores.
- **Georgia** – Similar to Florida, several cities have issued stay-at-home orders despite no active statewide order, including Atlanta, Blakely, Carrollton and Savannah. Additionally, the definition for critical and essential businesses and employees is also very similar, including healthcare facilities, grocery stores, gas stations, construction, and utility providers. Carrollton and Savannah specifically include all sectors

## Navigating a stayathome order Is your business non

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listed by the CISA guidelines in their definitions of essential.

- **Hawaii** – Governor David Ige supplemented previous state-wide orders to issue a mandatory stay-at-home order. The order specifically states that all residents must remain home “except as necessary to maintain continuity of operations of the federal critical infrastructure sectors as identified [by CISA].” The order includes an additional list of essential businesses, such as cannabis production, critical trades, mail services, laundry services, and restaurants for consumption off-premises.
- **Idaho** – The Idaho Department of Health & Welfare issued an order to self-isolate for the entire state. The Department’s order incorporates by reference the guidance provided by the CISA memo. In addition, the order lists certain other essential businesses including firearm businesses, laundromats, restaurants that prepare food for delivery and carry-out, essential tribal operations, and legal services.
- **Illinois** – The Illinois order issued by Gov. JB Pritzker expressly states that all businesses and activities listed are “meant to encompass the workers identified in the [CISA memo].” As such, the majority of essential workers and businesses listed are the same as provided by CISA.
- **Indiana** – Gov. Eric Holcomb’s stay-at-home order directly references the CISA memo and instructs that all workers identified in the memo are included in the definition of essential businesses and operations. Additionally, the Governor’s order provides a list of other business that qualify as essential, such as organizations that provide social services, religious entities, and gas stations.
- **Kansas** – After several municipalities issued stay-at-home orders, Governor Kelly issued a statewide stay-at-home order. The Governor’s order directs individuals to stay at home unless performing an essential function. The Kansas Essential Functions Frameworks defines essential functions to include businesses providing access to cable and internet, businesses that distribute electricity and transport cargo and passengers, media outlets, public works, law enforcement, government functions, insurance services, and human and animal foods products and services.
- **Kentucky** – Unlike other states, Kentucky Gov/ Andy Beshear restricted all businesses that are not considered “life-sustaining.” Life-sustaining retail businesses include grocery stores, pharmacies, banks, hardware stores, and “other businesses that provide staple goods.”
- **Louisiana** – Gov. John Bel Edwards order states that guidance on what workers are considered essential should be taken directly from the guidance issued by CISA.
- **Maine** – On March 31, Governor Mills issued a more extensive stay-at-home order for individuals residing in Maine. The Governor provided a list of businesses and operations that qualify as essential, as well as a list of non-essential businesses and operations. The essential list includes grocery stores, convenience stores, food processing and agriculture, construction and maintenance of essential infrastructure, group homes, office supplies, laundromats, banks, public transportation, and all utility services.
- **Maryland** – Governor Hogan’s order states that no Maryland resident should leave their home unless it is for an essential job or for an essential reason. The Governor’s order defines non-essential businesses as all establishments and facilities that are not included in CISA’s list of critical infrastructure sectors.
- **Massachusetts** – Instead of directly referencing CISA guidelines, Gov. Charles Baker issued a list of all businesses and organizations that provide COVID-19 essential services. These businesses include those involved in healthcare, public health and human services; law enforcement, public safety and first responders; food and agriculture; energy; transportation and logistics; public works; communication and information technology; critical manufacturing; hazardous materials; financial services; and defense.
- **Michigan** – Gov. Gretchen Whitmer took a similar approach to that of Connecticut. The stay-at-home

## Navigating a stayathome order Is your business non

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order expressly states that critical infrastructure workers include those listed in the CISA memo.

- **Minnesota** – Governor Walz issued a stay-at-home order for all individuals residing in Minnesota. The order states that workers that provide assistance or work in critical sectors are exempt from the order. The exemptions are based on the guidance provided by CISA.
- **Mississippi** – The shelter-in-place order issued by Governor Reeves prohibits residents from leaving their homes unless working for or visiting an essential business. An essential business includes essential government functions, essential healthcare operations, essential infrastructure, manufacturing, agriculture and farms, essential retail, media, construction, and the categories of workers and related industries identified by the CISA memo.
- **Missouri** – Multiple areas in Missouri have issued stay-at-home orders including Kansas City, St. Louis, Clay County, Jackson County and St. Louis County. Each order defines essential business to include healthcare operations, essential infrastructure, essential government functions, grocery stores, pharmacies, news media, gas stations, banks, trash collection, hardware stores, construction, mailing services, funeral homes, public transportation, and labor unions.
- **Montana** – The stay-at-home order issued by Governor Bullock directs all individuals to remain at home and for all non-essential businesses to close. Individuals may leave their home or residence to perform essential services or to work at essential businesses, including health care and public health operations, human services operations, essential infrastructure, governmental functions, pharmacies, grocery stores, food and beverage production, media, critical trades, gas stations, mail services, laundry services, and restaurants for off-premises consumption.
- **Nevada** – After requesting that residents remain home for several weeks, Governor Sisolak issued an emergency directive on March 31 ordering all residents to remain in their residences. The order permits individuals to leave their homes for essential healthcare operations, essential infrastructure operations, and to perform work or obtains goods from essential licensed businesses. Under the Governor’s March 20 emergency order, essential licensed businesses include healthcare providers, convenience stores, security services, retail cannabis dispensaries, construction, mining, and manufacturing.
- **New Hampshire** – The emergency order issued by Governor Sununu requires individuals to remain home and orders the closure of all non-essential businesses. The emergency order provides a list of essential businesses including law enforcement, food and agriculture, human services, utility services, transportation and logistics, public works, communications, information technology, and other community-based essential functions such as hotels, weather forecasters, elections personnel, cleaning services, and construction workers.
- **New Mexico** – Although not a stay-at-home order, Cabinet Secretary Kathyleen Kunkel ordered the closure of all businesses except those deemed essential. The businesses exempt from the order include those falling within the following categories: healthcare operations, homeless shelters, grocery stores, farms, emergency management facilities, infrastructure operations, media services, gas station, laundromats, banks, professional services and utilities.
- **New Jersey** – Although the New Jersey order issued by Gov. Philip Murphy does not reference CISA guidelines, the businesses designated as essential closely mimic those listed by CISA with certain additions. The businesses include laundromats, stores that principally sell supplies for children under five years old, and liquor stores.
- **New York** – Similarly to Connecticut, Gov. Andrew Cuomo directed the New York Empire State Development Corporation to provide a list of which businesses are determined to be essential. The list

## Navigating a stayathome order Is your business non

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includes essential health care operations, essential infrastructure, telecommunications, essential manufacturing, grocery stores, pharmacies, media, financial institutions, construction, and defense.

- **Norman, Oklahoma** – Governor Kevin Stitt has urged vulnerable residents to remain home but has not yet ordered a state-wide order. However, City of Normal Mayor Brea Clark ordered all residents stay home and the cessation of all non-essential business. According to the order, essential businesses include grocery stores, pharmacies, news media, gas stations, banks, trash collection, hardware stores, construction, mailing services, funeral homes, public transportation, and labor unions.
- **North Carolina** – Both Durham and Mecklenburg County issued stay-at-home orders prohibiting all business activity unless deemed essential. The sectors included in the CISA memo are expressly included in the City of Durham’s essential businesses. Although not expressly listed, Mecklenburg County’s order lists similar essential businesses, such as grocery stores, media, gas stations, educational institutions, and transportation services.
- **Ohio** – The Ohio stay-at-home order, issued by the Ohio Department of Health, provides that any sector identified by the CISA memo shall be deemed essential and provides a list of additional businesses and activities that qualify as essential, including licensed marijuana production, religious entities, first amendment protected speech, labor union functions, and funeral services.
- **Oregon** – Unlike other state orders that list what businesses are essential, Governor Kate Brown’s order provides a list of businesses that are required to close. These businesses include amusement parks, hair salons, bowling alleys, cosmetic stores, gyms, malls, boutiques and museums. In addition, the order grants authority to the Oregon Health Authority to determine if additional business closures are necessary.
- **Pennsylvania** – Gov. Tom Wolf issued a general order stating that all non-life-sustaining businesses were to close. The state of Pennsylvania subsequently released a list of industries that qualify as “life sustaining,” including agriculture, forestry, fishing and hunting; mining and oil and gas extraction; food manufacturing; paper manufacturing; grocery and liquor stores; transportation services; and utilities.
- **Rhode Island** – Governor Raimondo announced an executive order on March 28 which requires all residents to remain at home and closes on non-critical retail businesses. Critical retail businesses, which are allowed to remain open, include food and beverage stores, pharmacies, medical supply stores, pet supply stores, mail operations, gas stations, laundromats, hardware stores, funeral homes, and other stores identified as critical by the Department of Business Regulation.
- **Tennessee** – Residents in Franklin, Davidson County and Shelby County have been ordered to stay-at-home and shelter-in-place unless engaged in an essential activity or business. Similarly to the majority of orders issued, essential businesses include grocery stores, media, gas stations, educational institutions, and transportation services.
- **Texas** – Although Governor Greg Abbot has not issued a statewide stay-at-home order a multitude of cities and counties have issued orders to combat COVID-19. Over 35 cities and counties have issued stay-at-home orders including Harris County and Dallas County, which combined affect over 7 million people. The Harris County order defines essential businesses to include the work necessary to the operations and maintenance of the critical infrastructure sectors identified by CISA.
- **Vermont** – Governor Philip Scott’s stay-at-home order directs all businesses, except those providing services or functions deemed critical to public health and safety, as well as economic and national security, to cease operations. Critical services include health care operations, critical manufacturing, grocery stores, fuel supply, trash collection, banks, and news media.

## Navigating a stayathome order Is your business non

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- **Virginia** – Governor Northam previously shut down all schools and nonessential businesses. However, after other public areas remained crowded, Governor Northam issued a formal stay-at-home order for all individuals residing in Virginia. The prior Governor’s order closing all non-essential businesses, defined essential businesses to include grocery stores, pharmacies, medical supply retailers, auto parts stores, lawn and garden retailers, liquor stores, healthcare facilities, banks, and dry cleaners.
- **Washington** – Instead of making reference to CISA guidelines, Gov. Jay Inslee’s stay-at-home order provides a list of all “Essential Critical Infrastructure Workers.” The Washington list provides the same sectors as identified by CISA.
- **West Virginia** – Similarly to Ohio and Illinois, the stay-at-home order issued by Gov. Jim Justice expressly states that the term “Essential Businesses and Operations” includes all industries and workers described in the CISA memo.
- **Wisconsin** – Governor Tony Evers’ stay-at-home order encourages essential businesses to remain open while complying with social distancing requirements and CDC guidelines. According to the order, essential businesses include any business or worked identified by CISA guidelines as well as religious entities, media, shipping services, laundry services, critical labor union functions, and other businesses designated as such by the Wisconsin Economic Development Corporation.

### Continuing developments

At this time it is unclear how many more states will implement similar stay-at-home or shelter-in-place orders. We will continue to update this alert as new information becomes available.

McDonald Hopkins has a team of professionals dedicated to assisting businesses experiencing financial distress as result of the coronavirus. [Click here for a list of articles focused on providing legal and business solutions to the impact of the coronavirus on your business.](#)

If you have questions regarding your state’s stay-at-home/shelter-in-place order or if you need assistance in determining if your business qualifies as essential, please contact one of the attorneys listed below.



**Michael W. Wise**

[Team member bio](#)



**Teresa Metcalf Beasley**

[Team member bio](#)



**Kelsey M. Smith**

[Team member bio](#)