

April 16, 2020

Wisconsin Extends and Modifies Safer At Home Order

Today, April 16, 2020, the Secretary-designee of the Wisconsin Department of Health Services issued Emergency Order #28, which extends and amends the previous Safer at Home Order.

Importantly, the changes to the Safer at Home Order instituted by Emergency Order #28 do not go into effect until 8:00 a.m. on Friday, April 24, 2020. Emergency Order #28 states that the Order shall remain in effect until 8:00 a.m. on Tuesday, May 26, 2020. [Click here for the Emergency Order #28 text and the State's FAQs can be found here.](#)

This new Order, although containing an express end date of May 26, will certainly be effective between April 24 and May 12. The enforceability of the final two weeks of the Order are in dispute. Governor Evers first declared a public health emergency on March 12, 2020 via Executive Order #72. Governor Evers' emergency powers, which were triggered by Executive Order #72, remain in effect for a 60-day period. At the close of that 60-day period, the Governor's emergency powers can be extended by joint resolution of the State Legislature. Accordingly, an end date beyond May 12 makes it uncertain whether Emergency Order #28 will have any legal effect between May 13 and May 26.

Below is a summary of the changes to the current Safer at Home Order. If you believe any of these changes are applicable to you or your business, you should use the next two weeks to work with the author or your usual Michael Best attorney to prepare for the impact of the Order.

Changes that impose new restrictions:

- Essential businesses that are deemed essential because they supply, manufacture, or distribute goods and services to other essential businesses may only continue to operate those portions of their operations that are necessary to supply their essential business customers. All other operations

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may continue only to the extent that they fit within the definition of minimum basic operations.

- Emergency Order #28 also imposes additional safety requirements on essential businesses and operations and those non-essential businesses carrying out their minimum basic operations. Those additional safety practices include:
 - Essential retail stores with less than 50,000 square feet of customer floor space must limit the number of people in the store, including employees, to 25% of their total occupancy limits.
 - Essential retail stores with more than 50,000 square feet of customer floor space must limit the number of customers (excluding employees) to four people per 1,000 square feet. These large stores must also offer at least two hours per week of shopping time for vulnerable populations.
 - All essential businesses must:
 - increase their cleaning and disinfection practices,
 - ensure that only necessary workers are present, and
 - adopt policies to prevent any employees who have been exposed to COVID-19 or who are showing symptoms associated with COVID-19 do not come to work.

Changes that represent a relaxing of the current restrictions:

- Public and private golf courses may reopen. Scheduling and payment must be done online or via telephone, clubhouses and pro shops must remain closed, and the use of golf carts is prohibited.
- Public libraries must remain closed for in-person services but they may choose to provide online services and programming, curbside pick-up of books, and food distribution.
- The minimum basic operations that non-essential businesses are allowed to carry out have been expanded to include:
 - Curbside pick-up of goods that have been purchased online or by phone.
 - Basic delivery and mailing operations including mailing parcels or receiving parcels.
 - Performing aesthetic or optional exterior work to a building or physical property such as exterior construction and lawn care.
- Arts and craft stores may offer expanded curbside pick-up of materials necessary to make face-masks and other personal protective equipment.

Governor Evers also announced today that he will be coordinating with the Governors of Illinois, Michigan, Ohio, Minnesota, Indiana, and Kentucky with regard to formulating a plan to reopen the economies of the Midwestern states.

These Governors have officially stated that they are going to base their decisions largely on four factors:

- The rate of new infections and hospitalizations;
- The ability to test and trace infections;
- The healthcare capacity to handle a resurgence of COVID-19 infections; and
- The ability to implement best practices for social distancing.

The Governors also indicated that the reopening of the Midwestern regional economies may occur in phases and that despite their efforts to coordinate, each state will remain free to adopt whatever approach the elected leaders of that state believe is prudent.

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