

Guidance to Manufacturers on “Essential Business” Status under Governor Evers’ Safer at Home Order

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Practice Area: Business and Corporate Law & Manufacturing

In response to the continued spread of COVID-19 cases, the Wisconsin Department of Health Services issued Emergency Order #12 (“Safer at Home Order”). The Safer at Home Order imposes greater restrictions on Wisconsinites in an attempt to curb the spread of COVID-19 cases. Critically, the Safer at Home Order also encourages all essential business to continue operations.

Now is a time that manufacturers need to determine the essential nature of their business, while continuing to take all practical steps to reduce the spread of COVID-19 cases with sound use of best practices such as social distancing. This *Legal Update* provides guidance on what will cause your manufacturing business to fall within the scope of “Essential Businesses and Operations” under the Safer at Home Order, and obligations that exist for such businesses going forward.

Essential Businesses Encouraged to Stay Open

Under the Safer at Home Order, the general rule is that Wisconsinites should now stay home. That is the new normal effective 8:00 am on Wednesday, March 25, 2020. However, there are exceptions when one can leave home. The exceptions cover essential activities such as obtaining necessary supplies and services. Exceptions also cover “Essential Businesses or Operations.” The Safer at Home Order notes “[a]ll Essential Businesses and Operations are encouraged to remain open.”

Scope of “Essential Businesses or Operations”

Under the Safer at Home Order, Wisconsinites may leave their homes to operate Essential Businesses and Operations. A number of categories of manufacturers fall within the scope of Essential Businesses and Operations.

The list from the Safer at Home Order begins with those businesses identified in the Department of Homeland Security Cybersecurity and Infrastructure Agency (“CISA”) *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19*. According to CISA, “Essential Critical Infrastructure Sectors” include:

- Healthcare/Public Health
- Law Enforcement, Public Safety, First Responders
- Food and Agriculture
- Energy
- Water and Wastewater
- Transportation and Logistics
- Public Works
- Communications and IT
- Other community-based government operations and essential functions
- Critical Manufacturing
- Hazardous Materials
- Financial Services
- Chemical
- Defense Industrial Base

The Safer at Home Order then lists additional categories, including but not limited to:

- **Food and Beverage Production, Transport, and Agriculture.** Food and beverage manufacturing, production, processing, transportation, and cultivation; farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, boarding, rescues, kennels, and adopting facilities; farm and agriculture equipment, supplies, and repair services. (Section 13(c))
- **Supplies for Essential Businesses and Operations and Essential Governmental Functions.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations and Essential Governmental Functions with the support or supplies necessary to operate, including computers; audio and video electronics; household appliances; IT and telecommunication equipment; hardware; paint; flat glass; electrical, plumbing, and heating materials; construction materials and equipment; sanitary equipment; personal hygiene products; food, food additives, ingredients, and components; medical and orthopedic equipment; firearm and ammunition suppliers and retailers for purposes of safety and security; optics and photography equipment; diagnostic; food and beverages; chemicals; paper and paper products; soaps and detergents. (Section 13(r))
- **Manufacture, Distribution, and Supply Chain for Critical Products and Industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitation, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, and products used by other Essential Governmental Functions and Essential Businesses and Operations. (Section 13(v))

If a manufacturer has a question regarding whether its business is included within the designation of an Essential Business or Operations, the Safer at Home Order directs manufacturers to the Wisconsin Economic Development Corporation website for further consultation and a means to find a definitive answer.

Obligations Imposed on “Essential Businesses or Operations”

The Safer at Home Order imposes obligations on the operations of Essential Businesses or Operations, which include using technology to avoid in-person meetings and complying with Social Distancing Requirements to the extent practical. The Safer at Home Order defines Social Distancing Requirements as:

- Maintaining social distancing of six (6) feet between people;
- Washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer;
- Covering coughs or sneezes (into the sleeve or elbow, not hands);
- Regularly cleaning high-touch surfaces;
- Not shaking hands; and
- Following all other public health recommendations issued by DHS and the U.S. Centers for Disease Control.

DHS guidance for employers can be found [here](#).

Practical Steps for “Essential Businesses or Operations”

It is critical for manufacturers to evaluate the reasons they fall within the scope of Essential Businesses or Operations. Once the basis for falling within the scope of Essential Businesses or Operations is known, it is recommended to draft a written statement that explains the functions of your business that are currently and likely will remain essential. If your business supports or supplies another “essential” business, it is recommended to solicit a written communication from that customer confirming that your company is essential to the customer’s operations.

As we have noted in previous *Legal Updates*, once you have determined the reasons your business is essential, consider the appropriate means to communicate that to the necessary parties. It may be helpful to message the essential nature of your business to your workforce, supply chain and government authorities. As a manufacturer, it may be helpful to notify your suppliers that you are an essential business, provide your rationale for that determination, and inform them that suppliers of essential businesses are also permitted (and encouraged) to stay open under the Safer at Home Order.

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