

Essential Business Operations

On March 23, 2020, Indiana’s Governor Eric Holcomb issued Executive Order 20-08 (the “Order”) to mitigate the spread of COVID-19 in Indiana. The Order creates a baseline requirement that Hoosiers remain at home, and that travel is allowed only for essential business operations and activities. A significant number of businesses qualify as essential, while other consumer commerce, including purchase of groceries and other activities necessary to remain and work at home, are also considered essential. Additionally, outdoor activities that maintain Social Distancing Requirements are allowed.

Duration

The Order is effective from 11:59 p.m. on March 24, 2020, until April 6, 2020. § 2

Stay at Home or Place of Residence

The Order creates a default that “all individuals currently living in the State of Indiana are ordered to stay at home or their place of residence” except as outlined in the exceptions detailed in the remainder of the order. This section notes that Social Distancing Requirements must be followed, which require six feet of distance from another person, except for family or household members. Hotels, motels, rental units, and shelters are considered homes and residences under the Order. Homeless persons are exempt. Individuals whose residences are unsafe, expressly including victims of domestic violence, are permitted and encouraged to find other shelter. § 3.

Non-Essential Businesses and Operations

The Order requires all businesses and operations except for Essential Businesses and Operations to cease activities except for Minimum Basic Operations. The Order expressly permits businesses to “continue operations consisting exclusively of employees or contractors performing activities at their own homes or residences (i.e., working from home).” § 4. As detailed in the Order at § 15, Minimum Basic Operations includes the following if done while complying with Social Distancing Requirements:

- a. The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of its physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
- b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

Accordingly, the Order expressly permits activities to safeguard and protect inventories and equipment, and to permit and facilitate telework. While Essential Businesses and Operations are addressed below, note that all open businesses—including businesses engaged in Minimum Basic Operations—must comply with Social Distancing Requirements detailed at § 17 of the Order.

Prohibited Activities

Gatherings of more than 10 people are also expressly prohibited, unless exempted, which does not include gathering at a residence. While parks will remain open in accordance with Social Distancing Requirements, playgrounds are expressly closed, together with effectively any other public entertainment facility, including country clubs. § 5.

Essential Travel

Public transportation is not closed but is limited to use for Essential Travel and Essential Activities, including compliance with Social Distancing Requirements to the greatest extent feasible. § 6. At § 16, the Order expressly defines Essential Travel as anything that is related to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations, together with additional exceptions including travel to care “for the elderly, minors, dependents, persons with disabilities, or other vulnerable persons,” travel to educational institutions to receive food or learning supplies, travel to return home from outside Indiana, and travel required by a court order, including custody and parenting time agreements.

Essential Activities

The Order details at § 7 certain Essential Activities, which are divided into (a) health and safety tasks including seeking medical services or medical supplies, (b) obtaining necessary supplies and services, including seeking such for those who cannot or should not leave their home, including for groceries and food, household consumer products, products needed to work from home, automobile supplies, and other safety and sanitation needs, (c) outdoor activities not otherwise prohibited that are done in accordance with Social Distancing Requirements (including walking, hiking, running, and biking), (d) work as otherwise provided, and (e) to care for others.

Healthcare and Public Health Operations

Healthcare and Public Health Operations are broadly allowed, including medical services, medical device manufacturing and related supply chain, optometry services, and veterinary care, together with manufacturers and warehouse operators that produce necessary equipment, including gasses, testing supplies, and sanitizing, disinfecting, and sterilization supplies. This § 9 expressly notes it is to be broadly construed to permit such operations.

Human Services Operations

The Order at § 10 details a number of Human Services Operations allowed to remain open, including long-term care facilities, rehabilitation services, and other social service businesses.

Essential Infrastructure

The maintenance and repair of Essential Infrastructure is permitted and detailed at § 11, which includes a wide range of activities, including repairs to physical buildings and telecommunication infrastructure.

Essential Business Operations

Essential Business Operations are defined at § 14 to include Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, together with:

- a) workers detailed on the list available at <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>
- b) stores selling groceries and medicine, including alcohol, and their supply chain and support operations, including stores that sell non-grocery produces necessary to maintaining safety and sanitation;
- c) food and beverage manufacturing, including agriculture and processing;
- d) organizations that provide charitable and social services;
- e) religious entities following CDC guidance;
- f) media;
- g) gas stations and businesses needed for transportation, including auto repair;
- h) banks and other financial institutions broadly, including pawnbrokers and payday lenders;
- i) hardware stores and businesses that sell electrical, plumbing, and heating material;
- j) critical trades including plumbers, electricians, and janitorial staff, among others;
- k) shipping services, including end user couriers for food;
- l) educational institutions for the limited purposes of facilitating distance learning or performing other critical functions (which does not amend prior orders);
- m) laundry services;
- n) restaurants for consumption off-premises, including schools providing food distribution;
- o) work at home suppliers;
- p) suppliers of goods necessary for other Essential Businesses and Operations, including computers, technical equipment, hygiene products, and hardware products, expressly including firearms and ammunition suppliers;
- q) transportation services to provide transportation for essential travel, expressly including airlines, taxis, Uber and Lyft, and vehicle and boat rental;
- r) home-based care services;
- s) residential facilities and shelters;
- t) professional services including legal services, accounting services, insurance services, and real estate services (including appraisal and title);
- u) manufacturing, distribution, and supply chain for critical products and industries;

- v) critical labor union functions;
- w) hotels and motels for lodging and food, and
- x) funeral services.

This list is a summary of such categories included at § 14 and should be reviewed with specificity.

Social Distancing Requirements

The Order at § 17 provides Social Distancing Requirements, which should be reviewed, which includes (a) designating six-foot distances for employees and customers in line, (b) having available sanitizing products for employee and customers, (c) implementing separate hours for elderly and vulnerable customers, and (d) posting online the status of the facility, including its hours, how it can be reached, and how to continue services by phone or remotely.

COVID-19 Information and Checklist for All Businesses/Employers

The Order at § 19 also provides mandatory requirements for all businesses and employers, including (a) permitting remote work, (b) encouraging sick employees to stay home based on a number of requirements including no symptoms for 72 hours AND at least a week since the symptoms first began, (c) updating all leave policies, (d) separating employees who appear to be sick and restrict access of sick individuals, (e) reinforce messaging, (f) sanitizing, and (g) preparation to change business practices.

Link to the Order in its entirety here: https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf