

COVID-19: Must Your Business Close?



ALERT | March 17, 2020

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As local governments seek to stop the spread of the novel coronavirus (COVID-19), states, counties and cities have issued executive orders, recommendations and mandatory restrictions that limit business operations and public gatherings. Specific examples appear below. These pronouncements are constantly changing and subject to various, sometimes conflicting “clarifications.” In deciding whether your business should close, you should check the following:

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- Nature of the business: Restaurants and entertainment venues are getting the lion's share of regulatory attention.
- Essential vs. nonessential: The most important distinction is whether a business is "essential." Definitions vary greatly, so you must look at the specific definition by the regulatory authority, together with the lists of examples that are typically set forth.
- Whether the policy is permissive or mandatory: Some fall in either category, and some, like Pennsylvania, are unclear.
- Best practices independent of the regulators: You should also evaluate best social distancing practices, independent of whether you are ordered to shut down. Can all or most of your staff work remotely? If not, can they be kept six feet apart? Are common areas being constantly cleaned? Failure to abide by prevailing health recommendations may create unnecessary liability for your company.

Do I need to close my restaurant, bar, entertainment venue or gym?

The following authorities have issued mandatory closures of restaurants and bars, although most exempt takeout:

- Delaware
- District of Columbia
- Indiana
- Kentucky
- Massachusetts
- Michigan
- Missouri
- New Hampshire

- New Mexico
- Ohio
- Oregon
- Houston, Texas
- Dallas, Texas
- Salt Lake City, Utah

The following authorities have issued mandatory closures of restaurants and bars, plus entertainment venues, like movie theaters and gyms:

- Colorado
- Illinois
- Louisiana
- Maryland
- Minnesota
- New Jersey (in part, see below)
- New York (recommendation only)
- Pennsylvania
- Rhode Island
- Washington

- California Bay Area Counties (San Francisco, Marin, Santa Clara, San Mateo, Alameda and Contra Costa)

What are the most prominent restrictions by geography?

Pennsylvania

- As of now, Pennsylvania is the most restrictive state in the country. All nonessential business were required to close by 12:01 a.m. on March 17, 2020.
- “Non-essential businesses include public-facing industries such as entertainment, hospitality, and recreation facilities, including but not limited to community and recreation centers; gyms, including yoga, barre and spin facilities; hair salons and barber shops, nail salons and spas; casinos; concert venues; theaters; sporting event venues and golf courses; retail facilities, including shopping malls except for pharmacy or other health care facilities within retail operations.”
- “Essential services and sectors include but are not limited to food processing, agriculture, industrial manufacturing, feed mills, construction, trash collection, grocery and household goods (including convenience stores), home repair/hardware and auto repair, pharmacy and other medical facilities, biomedical and healthcare, post offices and shipping outlets, insurance, banks, gas stations, laundromats, veterinary clinics and pet stores, warehousing, storage, and distribution, public transportation, and hotel and commercial lodging.”
- The state has suggested that it will not enforce the order directly, and members of the Republican House of Representatives have questioned Governor Wolf’s authority to close businesses.

Philadelphia, Pennsylvania

- The City of Philadelphia has closed all nonessential businesses, effective March 16, 2020 at 5 p.m.
- “Only essential commercial establishments should remain open. To allow for essential goods to be accessible to the public, the City of Philadelphia designates the following businesses as essential:

- Supermarkets and grocery stores
- Big box stores
- Pharmacies
- Discount stores, mini-markets, and non-specialized food stores
- Daycare centers
- Hardware stores
- Gas stations
- Banks
- Post Offices
- Laundromats and dry cleaners
- Veterinary clinics for domestic pets and pet stores

Also deemed essential are commercial establishments that sell any of the following: frozen products; non-specialized stores of computers, telecommunications equipment, audio and video consumer electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; automotive fuel; domestic fuel; sanitary equipment; personal hygiene products medication not requiring medical prescription; medical and orthopedic equipment; optics and photography equipment; and soaps and detergents.”

New Jersey

- Nonessential businesses (including retail) are limited except from 5:00 a.m. to 8:00 p.m. and must limit occupancy to 50 people.
- Examples of essential businesses are “grocery/food stores, pharmacies, medical supply stores, gas stations, healthcare facilities and ancillary stores within healthcare facilities.”

Bergen County, New Jersey

- Effective March 20 at 8 a.m., malls, shopping centers, offices, construction and business activity of any type or nature must be closed.
- Exceptions are provided for preparation and sale of drugs, meals, and prepared food; takeout sale of alcoholic beverages, newspapers, pet food and sanitary pet products, gasoline and food products; banks; and funeral parlors.
- Auto repair shops may remain open if they are attached to and part of a gasoline station.
- Health care facilities shall remain open with the exception of dental care facilities, which shall close except as may be deemed necessary by a licensed dentist to treat emergency conditions.
- Law firms, other entities or individuals specifically licensed to provide professional legal services are exempt to the degree necessary to participate in Superior Court trials or other ancillary court proceedings or emergent matters or transactions.
- “Food establishments or retail establishments that primarily sell food, either fresh or preserved, including but not limited to grocery stores and supermarkets and similar establishments, and the portion of establishments that engage in this activity shall be permitted to remain open between the hours of 7 a.m. to 11 p.m. Food establishments shall be restricted to the sale of food and health care products, and shall prohibit the purchase of any other items. Larger food establishments and supermarkets shall limit the number of patrons within a store to fifty (50) at any one time. Smaller store that are not capable of servicing fifty (50) patrons shall impose an appropriate customer limit to comply with CDC social distancing guidelines.”

California Bay Area Counties (San Francisco, Marin, Santa Clara, San Mateo, Alameda and Contra Costa)

- All individuals in these counties are ordered to shelter at their homes.
- They may only leave for essential activities, essential government functions, or to operate essential businesses, each of which are defined in the orders these counties issued.

- Essential businesses are strongly encouraged to stay open.
- All businesses other than essential businesses are required to cease all activities at facilities located within the counties (this does not include working from home). Provided that they comply with social distance requirements, these nonessential businesses are permitted to engage in minimum basic operations, which means activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, and the minimum necessary activities to facilitate employees working remotely.
- Essential activities include activities/tasks essential to health and safety, such as obtaining medical supplies and medication; visiting a doctor; and obtaining food, sanitation products, and supplies necessary to work from home.
- Essential infrastructure includes public works construction, construction of housing, airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems. Businesses engaged in this work must comply with social distance requirements to the extent possible.
- Essential businesses include:
 - Healthcare operations and essential infrastructure.
 - Grocery stores, certified farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other nongrocery products, and products necessary to maintaining the safety, sanitation and essential operation of residences.
 - Food cultivation, including farming, livestock and fishing.
 - Businesses that provide food, shelter and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals.

- Newspapers, television, radio and other media services.
- Gas stations and auto-supply, auto-repair and related facilities.
- Banks and related financial institutions.
- Hardware stores.
- Plumbers, electricians, exterminators and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences, essential activities and essential businesses.
- Businesses providing mailing and shipping services, including post office boxes.
- Educational institutions — including public and private K-12 schools, colleges and universities — for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six feet per person is maintained to the greatest extent possible.
- Laundromats, dry cleaners and laundry service providers.
- Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under the order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site.
- Businesses that supply products needed for people to work from home.
- Businesses that supply other essential businesses with the support or supplies necessary to operate.
- Businesses that ship or deliver groceries, food, goods or services directly to residences.

- Airlines, taxis and other private transportation providers providing transportation services necessary for essential activities and other purposes expressly authorized in the order.
- Home-based care for seniors, adults or children.
- Residential facilities and shelters for seniors, adults and children.
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities.
- Childcare facilities providing services that enable employees exempted in the order to work as permitted.