

Governor Tim Walz April 23 Order Allowing Additional Businesses to Restart Operation

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(A subsequent order extended the business closures until May 17, 2020.)

On April 23, 2020, Minnesota Governor Tim Walz issued a new Executive Order—Emergency Executive Order 20-40—allowing certain “Non-Critical Exempt Businesses” to restart operations.

To date, an industrial, manufacturing, or office-based business has been allowed to operate only if it met the state’s definition of a “Critical Sector” business. (For more on the underlying stay-at-home order in effect until May 3 at 11:59 pm, see the Dorsey [eUpdate available here](#).)

The April 23rd order expands the types of industrial, manufacturing, and office-based businesses allowed to operate. Under this new order, industrial, manufacturing, and office-based businesses that are not in Critical Sectors may restart operations if they do not have customer-facing retail environments and meet certain other requirements. Effective Monday, April 27 at 12:00 am, such a business may restart operations *after* it has “establish[ed] and implement[ed]” a COVID-19 preparedness plan. Please note that even with this new order in place, “all workers who can work from home must do so,” and the exemption only applies to the duties of workers in Non-Critical Exempt Businesses that cannot be done at their home. In addition, the exempted workers are limited to travelling to and from their home and place of work, although an exception is made to allow “transportation to and from child care or school settings as necessary to ensure the safe care of children.”

The order’s detailed definitions and requirements include the following:

- **Eligible businesses:** the loosening of restrictions applies to the following types of businesses:
 - “**Industrial and manufacturing businesses**. . . . Businesses in this category

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include industrial or manufacturing businesses” not already permitted to operate as Critical Sector businesses. It also includes “wholesale trade, warehousing, and places of employment in which goods are in the process of being created. This category does not include customer-facing retail environments”

- **“Office-based businesses.** Businesses in this category include office-based businesses where workers do their work within an office space, at their desk, and their work is primarily not customer facing[.]”
- **The business must have a COVID-19 Preparedness Plan:** Before one of these types of businesses may reopen, it must develop and roll out a “COVID-19 preparedness plan.” Plans must contain at least the following elements:
 - “Require work from home whenever possible.”
 - “Ensure that sick workers stay home . . . including [by performing] health screenings[.]”
 - “Social distancing.”
 - “Employee hygiene and source control.” (Previously, the Minnesota Dept. of Health has advised that, “In the context of this COVID-19 pandemic, source control refers to the practice of wearing a mask to reduce the likelihood of transmitting the virus. . . . Facemasks worn as source control can be manufactured or homemade.”)
 - “Cleaning and disinfection protocols. All Plans must establish cleaning and disinfection protocols for areas within the workplace.”
 - Optional plan template [available at this link](#). Checklist [available at this link](#).
- **Senior management must sign the plan:** “Senior management responsible for implementing the Plan must sign and certify the Plan, affirming their commitment to implement and follow the Plan.”
- **The business must distribute and post the plan:** A business restarting operations under this order “must provide its Plan, in writing, to all workers, and the Plan must be posted at all of the business’s workplaces in locations that will allow for the Plan to be readily reviewed by all workers.”
- **The business must train employees and document that training:** A business restarting operations under this order “must ensure that training is provided to workers on the contents of their Plan and required procedures . . . in the appropriate language and literacy level for all workers.” Such businesses must also supervise employees to ensure comprehension and compliance, and must document fulfillment of the training requirement.
- **The business does not need to obtain pre-approval:** A business does not need to obtain pre-approval for its plan, but upon request, it must provide to authorities proof of compliance with the requirements of the order.
- **There are penalties for non-compliance:** In the event of non-compliance, there are civil and criminal penalties for employees and employers, including that “[a]ny business owner, manager, or supervisor who requires or encourages any of their employees to violate this Executive Order is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed \$3,000 or by imprisonment for not more than a year.”

Dorsey is here to help. Since the beginning of the COVID-19 pandemic, Dorsey & Whitney lawyers have been guiding companies in how to comply with shutdown orders in Minnesota and across the country. Please let us know if we can assist you in applying this order to your operations, developing a COVID-19 preparedness plan, training

employees, and documenting compliance with all aspect of the order.