

Latest Minnesota Emergency Executive Order Closes Some Businesses and Extends Work-From-Home Requirements

by Jillian Kornblatt

On November 18, 2020, Minnesota Governor Tim Walz issued Emergency Executive Order (EO) 20-99, “Implementing a Four Week Dial Back on Certain Activities to Slow the Spread of COVID-19” (the “Order”) to address the recent spike in positive COVID tests and COVID-related hospitalizations in Minnesota. The Order, which went into effect on Friday, November 20, 2020, added significant additional business restrictions. Key provisions include the following: Restaurants are limited to walk-up or drive-through service; gyms are closed; indoor entertainment venues are closed; ski areas and hiking trails remain open; and organized youth sports are prohibited. Additionally, social gatherings of any kind are prohibited, both indoors and outdoors. Social gatherings are defined as “groups of individuals, who are not members of the same household, congregated together for a common or coordinated social, community, or leisure purpose[.]” (Order, para. 6(a).) Social gatherings are prohibited “even if social distancing can be maintained.” *Id.*

EO 20-99 also imposes several requirements of which Minnesota employers should be aware.

First, the Order notes that prohibited social gatherings “do not include activity by workers or customers of businesses permitted to remain open under [the Order],” such as retail establishments. (Order, para. 6(a)(i)). In other words, those businesses may continue operating unless specifically prohibited as described above.

Second, the Order keeps in place key requirements impacting office-based workers, including that:

- (1) “any worker who can work from home must do so” (Order, para. 7(a));
- (2) all businesses in all industries must develop and implement a COVID-19 Preparedness Plan (Order, para. 7(d)); and
- (3) individuals must wear face masks in many settings (Order, para. 3).

As a reminder, the Minnesota Department of Labor and Industry has created a template

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COVID-19 Preparedness Plan which Minnesota employers may elect to use, available [here](#). A business need not submit a completed preparedness plan to the Department for approval, but it must be made available upon request by the Department or other public safety officers or regulatory authorities.

Third, the Order sets an end date of Friday, December 18, 2020 at 11:59 pm for all restrictions—including the requirement that “any worker who can work from home must do so.” Employers should note, however, that Gov. Walz will almost certainly extend requirements in some form beyond that date, likely including the requirement that all employees must work from home if it is possible for them to do so.

Finally, the Order maintains stiff penalties for non-compliance. An individual who willfully violates the Order is guilty of a misdemeanor and faces a fine of up to \$1,000 and jail time of up to 90 days. (Order, para. 10). The penalties are even harsher for business leaders: “Any business owner, manager, or supervisor who requires or encourages any of their employees, contractors, vendors, volunteers, or interns to violate this Executive Order” is guilty of a gross misdemeanor and faces a fine of up to \$3,000 and jail time of up to 1 year. *Id.* Additionally, the Minnesota Attorney General, city attorneys, and county attorneys may seek civil relief, including injunctions of actual or threatened violations of the Order, costs of investigation, and penalties of “up to \$25,000 per occurrence.” *Id.*

Takeaways

Businesses should familiarize themselves with the Order’s requirements, as discussed above, and should consider taking these four steps:

- (1) Ensure that your company continues to require all employees to work remotely who are able to do so;
- (2) Ensure that your supervisors, managers, and other business leaders are supportive of employees who are working remotely and do not attempt to exert any pressure or influence to encourage workers to return to a physical workplace;
- (3) If you have any employees present in any facility for any reason, ensure your business has developed and implemented a COVID-19 Preparedness Plan, as required by Minnesota law for employers in both critical and non-critical industries; and
- (4) If you receive an inquiry from any enforcement authority, consult counsel before responding.

Dorsey is here to help. Since the beginning of the COVID-19 pandemic, Dorsey & Whitney lawyers have been guiding companies in complying 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 aspects of the Order.