

March 24, 2020

Here is a brief analysis of the executive order regarding the COVID-19 crisis. While commentary and analysis from other industries continues to come to our attention, we believe this is the basic info you need at this time. As more information becomes available, we will send it to you.

Try not to be transfixed on the word essential. In the order, it declares home construction, among other activities, are essential and exempt from parts of the health order. The work does not have to be essential or necessary for any particular purpose. Not exempt are the health protocols, which are fully in force and apply while you conduct your trade. Please review section 6 (15), particularly the wording ‘as possible’. This provides some flexibility to strict application of the health protocols. We do not advise abusing this accommodation. However, there may be instances where some flexibility is necessary.

In this extraordinary circumstance we suggest you consult professional advice and counsel, as you provide your trade. We are aware many questions will arise and we will try to assist where possible.

### **Ohio Home Builders Association (OHBA) Stay At Home Order Recap**

1. What is an essential business?
  - a. Essential businesses have been defined through the Stay at Home Order and US Dept of Homeland Security document. Construction is an essential business.
  - b. Whether or not construction is essential does not depend on the type of project (i.e. emergency repair, etc.)
  - c. Financial Institutions, title agents, realtors also considered essential.
  
2. Building and Construction is an essential business allowed to continue operating under Section 12(K) Critical trades, and more broadly in Section 9 Essential Infrastructure.
  - a. Two Part test set out by Lt. Gov Husted in determining whether business can operate under exemption, MUST satisfy BOTH:

- i. Are you involved in an essential business? Building and Construction, critical trades and supply chains: Yes
    - ii. Are you able to satisfy ALL minimum safety protocols set forth in Order? See below.
  - b. Critical Trades: Including but not limited to HVAC, plumbing, electrical, cleaning and janitorial staff, exterminators, operating engineers, painting, moving and relocation, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, essential activities, and essential business and operations.
  - c. So long as safety protocols can be followed, remodeling tradespeople are included in the exemption, there may need to be further sign off from customers. See NAHB link <http://nahbnow.com/2020/03/evaluating-your-contracts-in-the-wake-of-the-coronavirus-pandemic/>
  - d. If Builder/Construction tradesperson can demonstrate activity/staff is part of essential operation, AND safety procedures can be followed, appears such could fall under essential business exemption.
3. Governor DeWine clarified, and it is referenced in the Order, Supply Chains for essential services MAY continue operating
4. You must review at the Stay At Home Order and be prepared to defend the rationale that you are an essential business and you are following all the safety guidelines.
5. Employer should take charge of demonstrating what activities are in the stream of producing the essential end.
6. Health and Safety Recommendations. You MUST be able to comply.
  - a. First and foremost, the Stay Home Order, issued March 22, 2020, includes Minimum Procedures issued which MUST be followed. These can be found in Section 15 and 18 of the Order and are listed below.

- i. Sec. 15. Required Social Distancing measures. Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
  1. Designate six-foot distances. Designating with signage, tape or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
  2. Hand sanitizer and sanitizing products. Having hand sanitizer and sanitizing products readily available for employees and customers;
  3. Separate operating hours for vulnerable populations. Implementing separate operating hours for elderly and vulnerable customers; and
  4. Online and Remote access. Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.
  
- ii. Sec. 18. COVID-19 Information and Checklist for Businesses/Employers
  1. Allow as many employees as possible to work from home by implementing policies in a areas such as teleworking and video conferencing.
  2. Actively encouraging sick employees to stay home until they are free of fever (without medication) for at least 72 hours AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare providers note to validate the illness or return to work of employees sick with acute respiratory illness.
  3. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, shortness of breath).

4. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered.
  5. Reinforce key messages—stay home when sick, use cough and sneeze etiquette, and practice hand hygiene—to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues and no-touch disposal receptacles for use by employees.
  6. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down before each use.
  7. Be prepared to change business practices if needed to maintain critical operations (e.g. identify alternative suppliers, prioritize customers, temporarily suspend some of your operations).
- b. Safety protocol Guidance has also been issued and shared by other sources (NAHB, NRP, etc), and should be reviewed for implementation. These can be found at the following links:
  - c. <https://www.ohiohba.com/wp-content/uploads/2020/03/NRP-Construction-Infectious-Disease-Safety-Protocol.pdf>
  - d. <https://www.ohiohba.com/covid19/>