

Update: Maine Stay At Home Orders

April 2, 2020

On Tuesday, March 31, 2020, Governor Mills issued [An Order Regarding Further Restrictions on Public Contact and Movement, Schools, Vehicle Travel and Retail Business Operations](#). This update focuses on the Stay-at-Home Order and also addresses the portion of the Order that imposes much more granular limits and requirements upon essential retail businesses and operations. Note that the order also restricts modes of travel and orders that all schools shall remain closed to in-person instruction until at least May 1, 2020.

Stay-at-Home Order

The March 31 Stay-at-Home order intersects with and builds upon the Governor's Tuesday, March 24, 2020 [Order Regarding Essential Businesses and Operations](#). While the March 24 Order continues to require compliance by businesses, the Stay-at-Home order requires compliance from every individual in Maine. The Governor ordered individuals to stay at home except to participate in "Essential Activities" or to go to work. Essential Activities are defined exclusively to be one of seven activities. We focus here on the two provisions by which individuals may leave home to go to work. The provisions rely on the March 24 Order's distinction between Essential Businesses and Operations and Non-Essential Businesses and Operations. The March 31 Order does not modify those earlier definitions.

Workers of [Essential Businesses and Operations](#) may leave home to travel to and from work, to and from child care, and to and from customers to deliver goods or perform services.

Workers of [Non-Essential Businesses and Operations](#) may leave home to travel to and from work "for the purpose of engaging in Minimal Operations" and to and from customers to deliver goods. Though the term Minimal Operations is capitalized like other defined terms, there is no definition in either the March 24 or March 31 Orders. We understand the term to reference the list of permitted activities from the Governor's March 24 Order.¹ Additionally, it is unclear why the Mar 31 Order does not specify that workers of non-essential businesses may travel to and from child care. However, the order does specify that one of the seven Essential Activities, for which a person may leave home, is "[e]ngaging in activities essential for the health and safety of one's self, one's family [or] household members. . ., including such things as accessing child care. . ."

¹ "Permitted activities may include taking orders by phone, email or other remote means and preparing such orders by delivery; maintaining the value of the business's inventory; preserving the condition of the business's physical plant and equipment; ensuring security; and processing payroll, employee benefits and related functions." March 24, 2020 Order.

April 2, 2020
Page 2

Essential Retail Businesses and Operations

The March 24 Order ordered that all businesses shall make all best efforts to implement and actively enforce social distancing requirements in and around their facilities. The Order listed four, nonexclusive, examples of best efforts. In separate guidance issued at the same time, the Governor gave six additional examples for retail establishments on how to implement social distancing requirements. The March 31 Order gives further, extensive details, including in-store gathering limits by the size of the store, additional in-store requirements regarding signage, operating hours and disinfecting property in the store.

Pre-Emption and Issues Presented by Municipal Actions

The March 31 Order specifies that it “preempts any local ordinance or emergency order of the same subject matter that is less restrictive than or otherwise inconsistent with this Order.” While Maine municipalities have broad home rule powers, they lack the authority to amend or opt-out of state-enacted statutes or other laws. Many Maine municipalities have issued COVID-19 orders. For example, the Cities of Portland and South Portland have issued stay-at-home orders that further restrict regarding the activity of non-essential businesses. Events are quickly evolving and we have seen a number of examples where municipal orders are more restrictive than municipal officers intend.

In some instances, municipal orders are inconsistent with the Governor’s order—either more restrictive or less restrictive. As a practical matter, if a business is located in a town or city that has an order in place that is more restrictive than the Governor’s order, that business should assume that it must comply with the more restrictive local requirements. In instances where the Governor’s order is more restrictive, a business must comply with the Governor’s order. In an environment of real-time change in legal requirements, businesses should also reach out proactively to seek guidance from municipal or state officials on any specific concerns.

Brann & Isaacson is issuing periodic legal updates to help Maine businesses and citizens respond to the COVID-19 pandemic. If you found this update helpful, please email us at LegalUpdates@brannlaw.com to be added to our mailing list.