

SAFER AT HOME ORDER – FREQUENTLY ASKED QUESTIONS

[Link to Order](#)

Q: How do I know if I am “essential” under the Safer at Home Order?

A: The WBA has received a number of questions from members relating to whether their business is an Essential Business and Operation under the Safer at Home Order. Understandably, many business owners are having trouble understanding the Order, and how it applies to them. We will try to provide the steps in understanding how your business is treated under the Order.

The analysis has become further confused by statements made by a deputy to the Chief of Staff in the Governor’s office to the Milwaukee Journal Sentinel relating to essential work that are not consistent with the Order itself. We believe there may be further clarifications soon. If and when new clarifications come out, we will update you as soon as possible.

Under the Order all non-essential business and operations must cease, and all individuals are to stay at home or in their place of residence. People may leave their residences to operate “Essential Businesses and Operations.” Do not be confused by the word “essential”. The work you do does not need to be “essential” for any particular purpose. The Governor in his Order created the category of “Essential Businesses and Operations”. It is a title for businesses that can continue to operate. If your business fits under this category, it can operate. There is no further analysis as to whether the work you do is essential for any particular purpose.

There are a number of areas where home construction and its related businesses are addressed that most likely apply to the WBA’s members. One easy place to look is in the list of Essential Businesses and Operations under section 13 of the Order. Under section 13, it includes: “Hardware and supplies stores. Hardware stores and businesses that sell electrical, plumbing, heating, and construction material.” If your business fits under the definition of “hardware and supplies stores”, your business is an Essential Business and Operation that may continue to operate subject to the requirements that are imposed on Essential Businesses and Operations. There is no further analysis to determine whether what you do is “essential” to any particular project or thing.

Another provision under section 13 is the “critical trades”. There is a laundry list of critical trades including “plumbers, electricians, carpenters, laborers, sheet metal, iron works, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, forestry and arborists. . .” If you are one of those listed trades you are an Essential Business and Operation, and you may continue to operate subject to the requirements imposed on Essential Businesses and Operations. There is no further analysis to determine whether what you do is “essential” to any particular project or thing.

Under the critical trades there is one last catch-all provision that says “other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.” This provision is a little trickier. If you are not listed in the critical trades, you may still be considered a “critical trade” if you are “necessary” to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations. For example, we believe that a company that does asbestos or lead paint removal would likely qualify because it is

necessary to the safety, sanitation, and essential operation of residences. It also mostly likely provides those services to other Essential Businesses and Operations.

Finally, the one that we concentrated on the most in prior posts is the definition of Essential Infrastructure, which includes “housing construction, except that optional or aesthetic construction should be avoided.” Under the Order, businesses that are part of the Essential Infrastructure are Essential Businesses and Operations. This provision is the one that will allow most of the WBA builder members to operate even if they do not self-perform the work. Under the Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provide, operate, maintain, and repair Essential Infrastructure. This means that if you provide any service or perform any work necessary to offer, provide, operate, maintain, and repair “housing construction”, then you are Essential Infrastructure and an Essential Business and Operation; however, you should avoid optional or aesthetic construction.

Under the Order, businesses are supposed to self-determine whether they meet the criteria, which is difficult to do. We can apply this to a few businesses, but please understand that the government may disagree with our analysis or may issue further clarifications that change the analysis.

- Insulation Installers. Do insulation installer provide a service that is necessary to maintaining the safety, sanitation, and essential operation of a residence? We believe the answer is most likely yes, and it would then qualify as an Essential Business and Operation as a critical trade. Further, does an insulation installer “provide any service or perform any work necessary to . . . maintain, and repair housing construction”? We believe the answer is most likely yes, and it would qualify under the housing construction provision of Essential Infrastructure, which means it is an Essential Business and Operation.
- Lawn mowing and lawn care. The Governor’s office already issued an answer that landscaping is not an essential businesses. When that answer was issued, we believe it was addressing lawn mowing and lawn care.
- Window coverings. It is difficult to see how a company that just sells window coverings meets either the definition under “housing construction” or “critical trades.” We also think it would be difficult to claim that window coverings are construction materials. Accordingly, our best guess is that a window coverings store is not an Essential Business and Operation. However, this question raises an interesting point. We do believe that an Essential Business and Operation such as a hardware store that is properly open because it sells construction materials, but also carries window coverings, may continue to sell window coverings.
- Garage Door Installers. A garage door installer may qualify as a Critical Trade as it is work that is necessary to maintaining the safety of a residence. It may also qualify under the housing construction provision because it provides work necessary to operate, maintain, and repair “housing construction”. In this case, optional or aesthetic work should be avoided.
- Like the analysis for insulation installer, excavating, concrete, fencing, erosion control, grading, and similar businesses are also likely Essential Businesses under the Critical Trade and housing construction provisions.

Obviously, these are difficult times. You should, above all else, use common sense when determining whether you meet the criteria of an Essential Business and Operation. If you have

doubts, you should contact an attorney before taking actions that could be deemed a violation of the Order. Additional questions regarding other businesses are addressed below.

Q: Can remodeling businesses stay open under the Governor's Safer at Home Order?

A: It is the WBA's understanding that remodeling may continue with limitations. The Order does not use the word "remodeling" in it. Instead, the Governor declared that "housing construction" to be "Essential Infrastructure". The term "housing construction" is not defined so we look to its common understanding. A common understanding of "housing construction" certainly would include both home improvements and remodeling. Moreover, the Order states that "'Essential Infrastructure' shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined." Based on this phrase, we believe that "housing construction" should be broadly defined to avoid impacts to housing construction, which means remodeling and home improvement would be part of housing construction.

A concern has been raised about an ambiguous phrase in the Order. The full phrase states "housing construction, *except that optional or aesthetic construction should be avoided*". It is very important to note that whenever the Order prohibits conduct it expressly and clearly states so. It will say individuals "are ordered to stay at home" or gatherings "are prohibited" or all entities "shall meet Social Distancing Requirements". In contrast, "should be avoided" is ambiguous. Literally, it does not say that optional or aesthetic construction is prohibited.

Accordingly, we do not see the phrase "*except that optional or aesthetic construction should be avoided*" as prohibiting remodeling or home improvement. If the Order intended to prohibit it remodeling or home improvement, the Order would have specifically said so. Instead, our best guess is that this portion of the Order is asking that housing construction businesses use common sense to avoid optional or aesthetic construction.

Since housing construction is "Essential Infrastructure", it is also considered an Essential Business and Operation. As an Essential Business, all housing construction "shall" meet Social Distancing Requirements between all individuals on the premises to the extent possible. Essential Businesses and Operations "shall", to the greatest extent possible, use technology to avoid meeting in person, including virtual meetings, teleconference, and remote work (i.e., work from home). Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

The WBA is constantly monitoring updates and clarifications from the state of Wisconsin on all its orders and will update its members if it obtains an interpretation or clarification from the state of Wisconsin.

Q: Is new construction allowed under the Order.

A. We are in uncharted water, so we are constantly look for clarification. As set forth in previous posts, the order clearly includes housing construction as Essential Infrastructure. Further the Order makes clear that "Essential Infrastructure" shall be construed broadly to avoid any impacts to essential infrastructure. The only limitation we see in the order is where it states: "housing construction, *except that optional or aesthetic construction should be avoided*". There is no explanation as to what is "optional or aesthetic" housing or what the Governor meant by "should be avoided".

Since the order specifically says that Essential Businesses and Operations are encouraged to remain open, and that Essential Infrastructure should be read broadly – it is our position that the

home construction industry is to stay open. To stay open would mean there needs to be new construction. We read the optional or aesthetic construction narrowly to mean optional and aesthetic construction to be something small on an existing house that can easily be done later.

If we read the term “optional or aesthetic construction” broadly to say it prohibits new construction, then housing construction would be essentially shut down.

It is our position that since the intent of the Governor’s Order was to keep “housing construction” as an Essential Business – saying no new construction would defy that intent. If the governor intended to have no new home construction, he would have just written it that way.

Based on the above interpretation, it is the WBA’s position that new construction can go forward.

Q. May residential roofers continue to operate under the Governor’s Safer at Home Order?

A. Yes. In most cases residential roofers can continue to operate. There are two areas in the Order that likely apply to residential roofers.

First, residential roofing on new construction or replacing an existing roof is likely an “Essential Infrastructure”. Governor declared that “housing construction” is part of the “Essential Infrastructure”. The term “housing construction” is not defined so we look to its common understanding. A common understanding of “housing construction” certainly would include installing a roof. Moreover, the Order states that “‘Essential Infrastructure’ shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.” The Governor’s order does say that “optional or aesthetic construction should be avoided.” As stated in a previous post, this phrase is ambiguous. However, we do not believe that the replacement of a roof that is damaged or nearing the end of its life would be the type of optional or aesthetic construction that should be avoided. Common sense should be used to avoid doing work that is optional or aesthetic.

Second, the Order specifically includes “critical trades” as Essential Businesses that may continue to operate. “Critical trades” include but are not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations. It seems clear that roofing installers would be included under the critical trades especially since maintaining, repairing, and replacing a roof is necessary to maintaining the essential operation of a residence.

For the replacement of an existing roof, we do not believe it needs to be failing (i.e., leaking, etc.) to be replaced. The essential operation of a residence does not require that there be damage to the residence before the work is essential. If the roof has reached the end of its lifespan, it is essential to the operation of the residence that it be replaced before there is damage to the home.

Since residential roofing is part of housing construction and part of the critical trades, it can continue to operate. This would include being able to have estimators measure roofs, etc., to provide bids to the homeowners. However, you cannot engage in door-to-door solicitation, regardless of its purpose.

Residential roofers as Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

Q: May construction material supply stores such as lumber, flooring, paint, lighting, electrical, and plumbing distributors and retailers continue to stay open and operate under the Governor’s Safer at Home Order?

A: Yes. The Governor’s Order specifically lists “hardware and supplies stores” as Essential Businesses and Operations. The provision applies to “hardware stores and businesses that sell electrical, plumbing, heating, and construction material.” The term “construction material” provides a broad “catch-all” for stores that supply the construction industry. Accordingly, that provide building materials, including flooring, wall coverings, lighting, and like material used in commercial and housing, are allowed to maintain normal operation.

Hardware and supplies stores as Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

Q: How does the construction of a pool apply under the Order?

A: We have provided several responses relating to “housing construction” being considered Essential Infrastructure under the Safer at Home Order. If the pool is part of a home construction, then the contractor completing the pool should be able to remain open to complete construction of it. The pool contractor would be considered part of “housing construction”. As part of housing construction, the pool contractor would be an Essential Business and Operations.

We have also previously pointed out that the provision that addresses housing construction states “except that optional or aesthetic construction should be avoided.” As previously stated, common sense needs to be used by businesses. A pool that is being constructed as part of housing construction likely qualifies as being allowed under the Order. However, a person simply wanting to construct a new pool on a residence, should be avoided.

Q. May a mason stay open to do stonework under the Governor’s Safer at Home Order? If yes, what if some of the work is decorative?

A1. Yes. Masonry is a specific trade called out as an Essential Business and Operation. Under the Order, the Governor designates “Critical trades” to include plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers,

exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.

A2. For the specifically called out critical trades such as masonry, there is not limitation on the work that they can do.

A question was asked about the requirement that the work be “necessary to maintaining the safety, sanitation, and essential operation of residences . . .” This provision does not apply to the listed trades such as plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, etc. It only applies to limit the catch all category of “other service providers”.

Governor Evers deemed masonry an Essential Businesses and Operation. There is no additional determination that needs to be made by a mason to stay open and continue working.

Q. Are landscaping businesses allowed to operate?

A. Landscape businesses are not considered essential businesses or operations. Staff can perform minimum basic operations as defined in the order on page 15.

Note: WBA continues to work on this in the hopes of being granted a revision to allow construction-related landscaping (ie: erosion control, excavating, and grading).

Q. My business is not an Essential Business and Operation, what can I do?

A. Non-essential business and operations must cease all activities at facilities within Wisconsin; However, non-essential businesses may continue operations consisting exclusively of employees or contractors performing activities at their home or residences (i.e., working from home). In addition, nonessential businesses and operations may continue Minimum Basic Operations.

Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

- The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions, including where these functions are outsourced to other entities.
- The minimum necessary activities to facilitate employees of the business being able to continue work remotely from their residences.

Q. Will I be required to carry documentation to leave my home?

A. No. Individuals do not need special permission to leave their homes, but they must comply with this order as to when it is permissible to leave home. Similarly, if a business is an essential business or operation as outlined in this order, it does not need documentation or certification to continue work that is done in compliance with this order.

Q: Can a landlord show an apartment?

A: Landlord's under the order are specifically barred from entering leased apartments except for emergency maintenance.

Under the real estate services, they may be able to show vacant apartments subject to all the limitations on real estate services.

HUMAN RESOURCES

Q. An employee has reported that he has a fever, can he come to work?

A. No. The employee should stay at home. In order to be a business currently open under the Safer at Home Order, it must be an Essential Business and Operation. Under the Order, all Essential Businesses and Operations must comply with DHS guidelines located: <https://www.dhs.wisconsin.gov/covid-19/employers.htm>. The website provides a list of guidance for businesses on employee issues.

Under the DHS guidelines, it explains that Essential Businesses and Operations need to actively encourage employees with any acute respiratory illness to stay home. Specifically, the DHS guidance states:

- Ensure that employees who have symptoms of respiratory illness stay home and do not come to work until they are free of fever (>100.4°F) AND respiratory symptoms (for example, cough, shortness of breath) for at least three days (72 hours) without the use of fever-reducing medicine AND seven days have passed since symptoms first appeared. Employees should notify their supervisor and stay home if they are sick.
- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work.

All businesses that are currently open as an Essential Business and Operation should review the DHS requirements as they are a condition of operating.

Q. Numerous questions were asked relating to employees and leave:

A. Employment law is very complicated, and the WBA strongly advises you to contact an employment attorney. Most of the questions that have been received address whether an employer must pay an employee sick leaves that stays at home related to the COVID-19 virus.

The U.S. Department of Labor has provided guidance that may be helpful to you at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave> relating to the Families First Coronavirus Response Act: Employer Paid Leave Requirements. The Act applies to private employers with fewer than 500 employees.

Some of the highlights of that guidance include (Please read the entire guidance document and not just the highlights below):

- Covered employers must provide two weeks (up to 80 hours) of paid sick leave at the employer's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to federal, State, or local government order or

- advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Covered employers must provide two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.
 - Covered employers must provide to employees that it has employed for at least 30 days up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

The U. S. Department of Labor has numerous fact sheets, Questions and Answers, and Posters at: <https://www.dol.gov/agencies/whd/pandemic>.

Again, please consult with an attorney or human resources professional.

Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

When taking any action permitted under the Order, all individuals, organizations, government bodies, and any other permitted group of individuals shall, to the extent possible, follow DHS guidelines located here: www.dhs.wisconsin.gov/covid-19/index.htm.

All Essential Businesses and Operations shall comply with DHS guidelines for businesses located here: www.dhs.wisconsin.gov/covid-19/employers.htm

An FAQ from the Evers Administration is [available here](#).