

May 2020

Follow @Paul_Hastings



Inching Back to Normal: The New Illinois COVID-19 Shelter in Place Order

By [Bradley Ritter](#), [Gregory Spitzer](#) & [David Stanek](#)

The State of Illinois has been under a “Shelter in Place” order since March 21, 2020. Recently, Illinois Governor JB Pritzker issued Executive Order 2020-32 (the “Executive Order”) to replace the prior Shelter in Place order. This Executive Order is substantially similar to the prior order, but adds additional restrictions in certain places and loosens restrictions in other places. We have noted in **red text** where this Executive Order differs from the prior order.

Generally, the Executive Order mandates that all individuals currently living within the State of Illinois stay at home, all businesses and operations in the State cease, all public and private gatherings outside a single household or in excess of ten (10) people stop, and all travel halt—**except for certain permitted exceptions described in the Executive Order.**

These exceptions are: (1) the homeless, (2) individuals working from home, (3) non-exempt businesses maintaining “minimum basic operations,” and (4) individuals leaving their homes for (a) Essential Activities, (b) Healthcare and Public Health Operations, (c) Human Services Operations, (d) Essential Travel, (e) Essential Infrastructure, (f) Essential Governmental Functions, and (g) Essential Businesses and Operations.

These exempt categories are described as follows:

Minimum Basic Operations:

- It is important to note that even if a business does not meet one of the exempt categories described below, that **the Executive Order *permits* all businesses to continue operations for the purpose of maintaining “minimum basic operations,”** which are described as the minimum necessary activities to maintain the inventory, equipment, and properties of the company, as well as to ensure security, process payroll and employee benefits, and facilitate employees working from home.
- The new Executive Order expressly states that “minimum basic operations” also include retail stores that do not qualify as Essential Businesses and Operations opening for the limited purposes of pick-up and delivery of online or telephone orders, provided that all pick-up must occur outside the store.



Essential Activities:

- Performing tasks essential to an individual's or their household member's health and safety (e.g., obtaining medication)
- Taking care of others
- Seeking necessary services or supplies (e.g., groceries)
- Engaging in outdoor activity (e.g., walking and biking, but note that playground use is expressly prohibited), provided that all guidance issued by the Illinois Department of Commerce and Economic Opportunity must be followed. These include a number of guidelines for any golfing undertaken by residents: <https://www2.illinois.gov/dceo/Documents/Golf%20With%20Restrictions.pdf>.
- Engaging in the free exercise of religion, provided that all social distancing requirements and the maximum limit of ten (10) people for gatherings must be followed. The Executive Order encourages religious organizations to use online or drive-in services in the place of normal services.

Healthcare and Public Health Operations:

- Working for or seeking services from hospitals and other healthcare providers
- Working for a manufacturer of medical products and/or cleaning products
- Working for or seeking veterinary care or grooming services provided to animals
- Note: gyms, spas, salons, barber shops, tattoo parlors, and similar facilities are expressly not exempted from closing

Human Services Operations:

- Working for or seeking services from certain "human services" providers (e.g., long-term care facilities, the Illinois Department of Human Services, certain day care centers, and mental health facilities)

Essential Infrastructure:

- Providing any services or performing any work necessary to offer, provision, operate, maintain, and repair essential infrastructure (e.g., food production/distribution/sale, construction (including, but not limited to, construction required in response to this public health emergency hospital construction, construction of long-term care facilities, public works construction, and housing construction), building management and maintenance, distribution centers, oil refining, waste and recycle collection and removal, airport operations, utility operations, roadway work, public transportation work, and cybersecurity)
- "Essential Infrastructure" is to be construed broadly



Essential Governmental Functions:

- Performing any State, county, township, and local governmental functions (e.g., emergency management personnel, law enforcement, court personnel, child protection services, and military)
- Performing any federal governmental functions
- "Essential Governmental Functions" includes all employees and contractors performing such services as identified by the applicable governmental body

Essential Businesses and Operations:

- Working for or seeking services from:
 - All of the types of operations and businesses described above
 - Grocery stores, markets, and convenience stores
 - Pharmacies
 - Food, beverage and cannabis manufacturing, production, processing, and cultivation
 - Religious and secular nonprofit organizations
 - Media businesses
 - Gas stations and businesses needed for transportation (e.g., repair shops)
 - Financial institutions, including banks and title insurance companies
 - Hardware and supply stores
 - **Greenhouses, garden centers, and nurseries**
 - Trade businesses (e.g., plumbers, electricians, painters, exterminators, janitors, movers, and sanitation workers)
 - Post offices
 - Shipping and delivery services
 - Educational institutions (except to the extent closed by other Executive Orders, by which Illinois schools were closed **through the remainder of the academic year**)
 - Hotels and motels to the extent used for lodging and delivery or carry-out food services
 - Laundromats and dry cleaners
 - Restaurants for consumption off-premises
 - Suppliers of products needed to facilitate individuals working from home (e.g., Staples, etc.)



- Transportation providers (e.g., taxis, airlines, Uber, Lyft, etc.)
- Home-based care providers (e.g., nannies, nurses, etc.)
- Residential facilities and shelters
- Professional service providers (e.g., lawyers, accountants, appraisers, title insurance providers, and insurance providers)
- Labor union essential activities
- Funeral service providers and related services
- Certain day care centers for children of exempt individuals under the Executive Order
- Suppliers, distributors, sellers, and manufacturers of any of the above Essential Businesses and Operations

Essential Travel:

- Travel for any of the aforementioned exemptions (including maintaining “minimum basic operations”)
- Travel to care for the elderly, minors, dependents, persons with disabilities, or other vulnerable persons
- Travel to educational institutions for receiving materials for long-distance learning or receiving meals for consumption off-premises
- Travel to return to a place of residence
- Travel required by law or court order

Whenever an individual is out of their home for any of the above reasons, that individual must maintain social distancing of at least six (6) feet and take other sanitary precautions, such as refraining from shaking hands, covering coughs and sneezes, and washing hands for at least twenty (20) seconds. **Additionally, any individual who is over the age of two and is able to “medically tolerate” a facemask must use a facemask when in a public place in which they are unable to maintain the required social distancing. Indoor spaces, such as stores, are automatically deemed such a place.**

All businesses described as exempt above, and all businesses operating to maintain “minimum basic operations,” must take proactive measures to ensure compliance with social distancing measures and other sanitary measures to prevent the spread of COVID-19, including (a) designating with signage the six (6) foot social distancing requirement, (b) having hand sanitizing products available, (c) implementing separate operating hours for elderly and vulnerable customers, (d) posting online whether a facility is open and how to best contact the facility, (e) providing employees with face coverings (and, where appropriate, other personal protective equipment) and requiring that all employees wear face coverings where maintaining social distancing is not possible, and (f) posting guidance provided by the Illinois Department of Health regarding workplace safety during the



COVID-19 pandemic. All businesses must evaluate which employees are able to work from home and are encouraged to facilitate work-from-home measures when possible.

Additionally, all *retail stores* that operate as Essential Businesses and Operations must (i) provide face coverings to all employees, (ii) cap occupancy at 50% of store capacity or the occupancy limit set for the store by the Illinois Department of Commerce and Economic Opportunity, (iii) designate aisles with signage and/or floor markings as “one-way” aisles where practicable, (iv) communicate with customers through signage and announcements that they should comply with social distancing, and (v) discontinue the use of reusable bags.

Manufacturers that are permitted to operate under the Executive Order must also comply with additional restrictions. Manufacturers must (1) adhere to social distancing requirements, (2) provide face coverings to all employees, (3) stagger shifts, (4) reduce line speeds, (5) operate only essential lines and shut down non-essential lines, (6) ensure that all spaces where employees gather allow for social distancing, and (7) downsize operations to the extent necessary to allow for social distancing and provide for a safe workplace accounting for COVID-19.

The Executive Order extends the protections of the Illinois Whistleblower Act to employees who report businesses for not complying with the Executive Order. Businesses that retaliate against such an employee for such a disclosure are subject to the penalties of the Act.

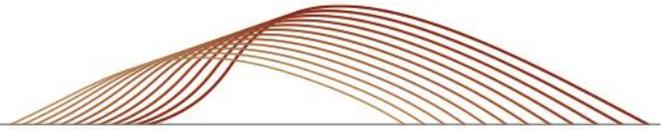
Finally, the Executive Order provides that it shall not act to alter or modify in any way any existing legal authority allowing a county or municipality to enact provisions that are stricter than those set forth in the Executive Order.

There is currently no expiration date of the Executive Order. Instead, Gov. Pritzker plans to loosen the restrictions of the Executive Order in a phased, incremental approach that will vary by geographical region of the State (the “Restore Illinois Plan”). The Executive Order represents “Phase 2” of the Restore Illinois Plan and applies to all regions of the State. When health metrics reflect improvement in the state of the pandemic, a new version of the restrictions in this Executive Order will apply to the region that has shown such improvement. Each phase will give the green light for additional businesses to open and activities to resume: Phase 3 will permit all offices, retail, salons, and manufacturing to open under capacity limits and other safety precautions; Phase 4 will permit gatherings up to fifty (50) people and allow all restaurants, bars, schools, and childcare to reopen and all non-essential travel to resume under certain guidance established by the State; and Phase 5 will provide for a full reopening. However, as stated above, each municipality may impose stricter guidelines for reopening, which the City of Chicago has done.

It is important to note that this situation is constantly evolving and the government’s restrictions on particular businesses are being refined on a daily basis. Accordingly, we recommend that our clients discuss their particular case with their Paul Hastings attorneys in order to determine the best path forward.



STAY CURRENT



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Chicago lawyers:

Bradley Ritter
1.312.499.6073
bradleyritter@paulhastings.com

Gregory E Spitzer
1.312.499.6071
gregoryspitzer@paulhastings.com

David Stanek
1.312.499.6095
davidstanek@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2020 Paul Hastings LLP.