



# What Oregon Employers Need To Know About COVID-19 Business Closures

Insights

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**[Ed. Note: Executive Order No. 20-07 has been extended indefinitely by Executive Order No. 20-14. Previously, on-premises consumption of food was set to be allowed starting April 15, 2020. The new April 7 Executive Order makes on-premises consumption prohibited indefinitely until the governor says otherwise.]**

Governor Brown announced earlier this week that she is banning seated dining at the state's bars and restaurants and prohibiting gatherings of more than 25 people. The March 16 executive order 20-07 includes exemptions for grocery stores and retail outlets. The ban started Tuesday, March 17 and is scheduled to last at least four weeks. Violating the governor's executive order is a misdemeanor.

Our Portland office has put together guidance to respond to Governor Brown's recent executive order. We also encourage you to review our nationwide Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus, put together by our firm's COVID-19 Taskforce.

## **I operate a food service or restaurant, entertainment, recreational facility in Oregon. Do we have to close? For how long?**

Probably, effective at 5:00 p.m. on March 17 until April 14, 2020, unless extended. **[Ed. Note: Executive Order No. 20-07 has been extended indefinitely by Executive Order No. 20-14. Previously, on-premises consumption of food was set to be allowed starting April 15, 2020. The new April 7 Executive Order makes on-premises consumption prohibited indefinitely until the governor says otherwise.]** The Proclamation specifically prohibits "on-premise consumption," of food or drink. However, it does allow restaurants and food service to remain open for drive-through, takeout, and delivery (however, locations open based on these exceptions must practice social distancing and allow three feet between customers ordering, waiting, or in line). Specifically, the Proclamation covers:

- Restaurants;
- Food courts;
- Bars;
- Taverns;
- Coffee shops;

- Corree snops;
- Wine clubs;
- Clubs;
- Brew pubs;
- Cafes; and
- All other similar establishments that offer food or

Other similar venues likely include, for example, social clubs, private clubs, tennis clubs, golf clubs, and tasting rooms.

### **I operate an entertainment or recreational facility in Oregon. Do we have to close? For how long?**

Probably, effective at 5:00 p.m. on March 17 until April 14, 2020, unless extended. **[Ed. Note: Executive Order No. 20-07 has been extended indefinitely by Executive Order No. 20-14. Previously, on-premises consumption of food was set to be allowed starting April 15, 2020. The new April 7 Executive Order makes on-premises consumption prohibited indefinitely until the governor says otherwise.]** The Proclamation specifically prohibits gatherings of 25 people or more. These gatherings include, but are not limited to, “any community, civic, public, leisure, faith-based, and sporting events, concerts, conventions, fundraisers, fairs, festivals, if a distance of at least three feet between individuals cannot be maintained.”

### **I operate a retail business. Do we have to close?**

Possibly not. Governor Brown’s prohibition on gatherings states the prohibition does not apply to essential businesses and services. The executive order defines those as “workplaces, grocery stores, retail stores, convenience stores, banks and credit unions, gas stations, hotels or motels, health care facilities, pharmacies, child care facilities, and state or local government.” However, Governor Brown did encourage these exempt businesses to implement social distancing protocols, which are consistent with guidance from the Oregon Health Authority. This Executive Order replaced the old Executive Order No. 20-05 (that limited gatherings of 250 or more).

### **I operate a different kind of business. Do we have to close?**

If your business is not covered by the categories above, it probably does not need to close at this time unless it receives specific recommendations due to an employee or onsite outbreak.

### **Our business is closing temporarily. Do I need to worry about WARN?**

It depends on the length of the closure and if your company is covered. Oregon does not have its own WARN act, so the federal WARN applies. See our WARN/Plant Closings section on our national FAQ. The only Oregon-specific obligations are to comply with the federal WARN act and employers must notify the State Department of Community Colleges and Workforce Development if they give notice of a plant closing or mass layoff under the federal WARN Act (Or. Rev. Stat. § 285A.516).

### **Do I need to worry about Oregon’s Secured Scheduling penalties?**

It depends on if you are a covered employer and the reason for closing. The law applies to companies with at least 500 employees, and especially impacts retail, hospitality, and restaurant workers. For the covered employees, the law generally requires employers to provide workers a reliable, “good faith” estimate of their work schedule when hired, and must have the work schedules written currently seven days in advance. Typically, an employer is required to provide compensation to an employee for each employer-requested change that occurs to a written work schedule without advance notice.

However, Oregon Bureau of Labor and Industries (BOLI) Commissioner Val Hoyle agreed that the governor declaring a state of emergency triggers the exemption for predictive scheduling and that BOLI will act accordingly. However, the agency stated that employers need to show a good faith effort in communicating with employees as soon as possible the scheduling challenges they are facing.

Arguably, nothing has been “suspended” as it relates to Oregon’s predictive scheduling laws. Instead, it is more that COVID-19 triggers the “natural disaster” exemption that means additional compensation is not due to employees when schedules change. ORS 653.455(3)(h).

### **What else can we do to ensure the health and safety of our employees and community?**

In addition to the CDC and the WHO, our state agencies and government authorities have provided useful resources that address how we can all help slow the spread of the novel coronavirus:

- Oregon Health Authority COVID-19 Updates;
- Governor Brown’s Executive Order;
- BOLI’s Statement Regarding Secured Scheduling; and
- Oregon’s Unemployment Guide Related to COVID-19 Layoffs, Closures, and Unemployment Insurance Benefits.

### **Conclusion**

COVID-19 and the state and federal response is likely to have a substantial impact on the operation of all businesses in Oregon. Fisher Phillips will continue to monitor related developments, so you should ensure you are subscribed to Fisher Phillips’ Alert System to get the most up-to-date information.

If you have questions, please contact your Fisher Phillips attorney, or any attorney in our Portland office.

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