



South Carolina Governor Orders Non-Essential Businesses To Close To Fight COVID-19

Insights

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South Carolina Governor Henry McMaster just ordered certain non-essential businesses throughout the state to close to fight the COVID-19 pandemic. Non-essential businesses under this order must close beginning April 1, 2020, at 5:00 p.m. What do employers need to know?

State v. Local Law

Governor McMaster has taken a gradual approach to social distancing measures related to COVID-19. On March 21, he ordered all bars and restaurants across the state to discontinue all dine-in service. Then, on March 23, he directed law enforcement to disperse all gatherings of three or more persons. On March 27, the governor ordered all persons who enter the state of South Carolina after being in New York, New Jersey, Connecticut, and the city of New Orleans to isolate or self-quarantine for two weeks.

In the meantime, the state's largest cities of Charleston and Columbia passed "stay-at-home" ordinances, ordering residents to stay home with certain exceptions and all businesses to close except "essential" ones. Charleston's stay-at-home ordinance went into effect on March 26, while Columbia followed on March 29. South Carolina Attorney General Alan Wilson, however, called the validity of these ordinances into question on March 27, stating in a non-binding opinion letter that the governor's emergency orders during the COVID-19 pandemic preempt similar local government orders.

Governor's March 31 Order

On March 31, Governor McMaster concluded that it was time to close certain "close contact" businesses throughout the state, but stopped short of a stay-at-home order that most Americans are currently under. Unlike many states and localities that have blanket directives to close all businesses with certain exceptions for "essential" businesses, Governor McMaster's order specifically lists non-essential businesses that must be closed. Those businesses include the following:

Entertainment venues and facilities

- Night clubs
- Bowling alleys
- Amusement parks

- Arcades
- Concert venues
- Theaters, auditoriums, and performing arts centers
- Tourist attractions (including museums, aquariums, and planetariums)
- Racetracks
- Indoor children's play areas *(excluding daycare facilities)*
- Adult entertainment venues
- Bingo halls
- Venues operated by social clubs

Recreational and athletic facilities and activities

- Fitness and exercise centers and commercial gyms
- Spas and public or commercial swimming pools
- Group exercise facilities, to include yoga, barre, and spin studios or facilities
- Spectator sports
- Sports that involve interaction with another person in close proximity and within less than six (6) feet of another person
- Activities that require the use of shared sporting apparatus and equipment
- Activities on commercial or public playground equipment

Close-contact service providers

- Barber shops
- Hair salons
- Waxing salons
- Threading salons
- Nail salons and spas
- Body-art facilities and tattoo services
- Tanning salons
- Massage-therapy establishments and massage services

According to the order, the above types of businesses must be closed to non-employees and may not be open for access or use by the public. Businesses that have questions about whether they are non-essential may seek clarification from the S.C. Department of Commerce. The Department is directed to provide a determination of non-essential status within 24 hours.

UPDATE: On April 3, the governor added retail stores to the list of non-essential businesses. According to the order, retail stores include:

- **Furniture and home-furnishings stores**
- **Clothing, shoe, and clothing-accessory stores**
- **Jewelry, luggage, and leather goods stores**
- **Department stores, with the exception of hardware and home-improvement stores**
- **Sporting goods stores**
- **Book, craft, and music stores**
- **Flea markets**
- **Florists and flower stores**

Retail stores must close to the public by April 6 at 5:00 p.m. However, retail stores are still allowed to fulfill online or telephone orders or provide curbside purchase, pickup, or delivery and home or off-site delivery.

Importantly, if a business is not explicitly addressed in the governor's order, the business may continue normal operations until the Department's determination is made. However, the Department's determination for any business is always provisional, meaning it is subject to change to account for the fast-evolving nature of the COVID-19 crisis.

What Does This Mean For Employers?

Employers with operations in South Carolina should review the above list of businesses to determine if they are deemed non-essential and must close beginning on April 1, 2020 at 5 p.m. If employers have questions about whether they are non-essential, they may fill out and submit a "Clarification of Business Designation" Form [on the South Carolina Department of Commerce's website](#), emailing covid19sc@sccommerce.com, or calling (803) 734-2873.

If an employer does not fall into one of the categories, it may continue normal operations at this time **under the governor's order**. However, South Carolina employers are advised at this time to follow any applicable local ordinances directing certain businesses to close. Attorney General Alan Wilson has noted that local ordinances closing businesses are deemed valid until they are found otherwise by a court of law.

Attorneys in the Columbia office of Fisher Phillips will continue to monitor the situation and provide any updates if a court addresses this conflict between local and state authorities. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. South Carolina employers should also be aware that the list of non-essential businesses pursuant to state or local orders could change as this pandemic progresses.

For further information, contact your Fisher Phillips attorney, any attorney in [our Columbia office](#), or [any member of our COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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