



City And County Of Denver Issues “Stay at Home” Order (UPDATED)

Insights

4.26.20

UPDATE (3/26/20): Colorado Governor Jared Polis has issued a statewide stay-at-home order effective March 26 at 6:00 AM through 11:59 PM on April 11. The order directs all Coloradans to stay at home and closes all businesses except for those deemed “critical.” Critical businesses include: healthcare operations; critical infrastructure; critical manufacturing; critical retail; critical services; news media; financial institutions; providers of basic necessities to economically disadvantaged populations; construction; defense; critical public and business services and related vendors; and critical government. The state’s stay-at-home order is arguably slightly less restrictive than Denver’s. For example, the state classifies firearms stores as critical retail, and deems semiconductor manufacturers critical. It also does not require “extreme social distancing” at liquor and marijuana stores. However, Governor Polis’s order specifically holds that if a business or individual is subject to a more restrictive local order, than the local order controls.

UPDATE (3/25/20): The remaining counties encompassing the greater Denver metropolitan area have now joined the City and County of Denver in issuing stay-at-home orders. Boulder, Jefferson, Adams, Arapahoe, and Douglas counties announced that, beginning Thursday, March 26 at 8:00 AM and continuing until 11:59 PM on April 17, all individuals will be required to stay at home unless leaving their residence to engage in an essential activity. The counties define essential activities and exceptions to the stay-at-home order similarly to the City and County of Denver.

As part of Denver’s continued response to the COVID-19 pandemic, the Denver Department of Public Health & Environment, at the direction of Mayor Michael Hancock, issued an order on March 23 requiring “all individuals anywhere in the City and County of Denver” to “stay at their place of residence.” The Order permits individuals to leave their residence only if necessary for: essential activities; healthcare operations; essential infrastructure; essential government functions; essential business; minimum basic operations; and essential travel.

To the extent anyone is outside, they must, as long as reasonably possible, maintain social distancing of at least six feet. The Order, which is like other state governments’ shelter-in-place orders, becomes effective March 24 at 5:00 PM and remains in effect until 5:00 PM on April 10, or until it is extended, rescinded, superseded, or amended. The provisions are summarized below.

Denver’s Stay at Home Order follows a statewide order from Governor Jared Polis on March 22, 2020 that directs all Colorado employers to reduce their in-person workforces by at least 50% and orders

all Colorado employers to implement work-from-home policies to the greatest extent possible. As with other similar orders, the governor's order exempts critical and essential businesses.

Denver's Order, however, applies more broadly than the state's. Along with the City of Boulder and San Miguel and Pitkin counties, Denver is essentially mandating a complete shutdown of all non-essential business and travel. Governor Polis has indicated that he is reluctant to implement a statewide shutdown but has stated that local officials may take that step if they deem it necessary. Denver's Mayor Hancock, with this new order, clearly believes such measures are appropriate for the City and County of Denver. We expect other cities and counties in the Denver metro area to soon follow with their own orders.

Essential Activities

Individuals are directed to stay at home and leave their residence only to perform any of the following "Essential Activities" as described below. People at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence except as necessary to seek medical care.

- To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
- To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
- To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as walking, hiking, biking or running. For purposes of outdoor activity, Denver parks will remain open to the public to engage in walking, hiking, biking, running, and similar outdoor activities but all playgrounds, golf courses, tennis courts, basketball courts, picnic areas, and other similar areas conducive to public gathering shall be closed. Additionally, the allowable outdoor activities in this Order do not include group sports and activities that would violate the Social Distancing Requirements as defined in this Section, such as, football games or volleyball games.
- To perform work providing essential products and services at the site of an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
- To care for a family member or pet in another household.

Healthcare Operations

Individuals may leave their residence to work for or obtain services at any “Healthcare Operations.” Such operations include, but are not limited to: hospitals, clinics, and walk-in health facilities; pharmacies; behavioral healthcare providers; nursing homes; veterinarians; animal shelters; and research and laboratory services. Health clubs, fitness centers, and gyms are not “Healthcare Operations.”

Essential Infrastructure

Individuals may leave their residence to provide services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” which include such things as: utility work; all construction operations and projects; the work of plumbers, electricians, and other skilled trades; oil refining and gasoline operations, waste removal; internet and telecommunications related services; airport operations; and road and highway maintenance.

Essential Government Functions

Personnel working for or to support Essential Government Functions are categorically exempt from Denver’s “Stay at Home” Order. “Essential Governmental Functions,” include, but are not limited to: law enforcement and public safety personnel (including fire prevention and response); security personnel; emergency dispatchers, court personnel; and the Denver City Council and all boards and commissions. All Essential Government Functions must be performed in compliance with the six-foot social distancing requirements, to the extent possible.

Essential Businesses

All businesses and operations, except Essential Businesses as listed below, are, in effect, required to cease all activities. Businesses may continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

- Healthcare Operations, Essential Infrastructure, and Essential Governmental Functions;
- Grocery stores and related food-selling businesses or businesses that sell products necessary to maintaining the safety, sanitation, and essential operation of residences;
- Food and plant cultivation, including fanning, livestock, and fishing;
- Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- Newspapers, television, radio, and other media services;
- Gas stations and auto-supply, auto-repair, and related facilities;
- Banks and related financial institutions;
- Hardware stores;
- Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;

- Businesses providing mailing and shipping services, including post office boxes;
- Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- Laundromats, dry cleaners, and laundry service providers;
- Restaurants and other facilities that prepare and serve food, but only for delivery, take out or drive through. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only;
- Businesses that supply products needed for people to work and learn from home, including technology suppliers providing hardware or software essential for communication or connectedness;
- Businesses that supply other essential businesses with the support or supplies necessary to operate;
- Businesses that ship or deliver groceries, food, goods or services directly to residences;
- Indoor/outdoor malls are closed except to the extent that they must remain open to allow operation of and access to Essential Businesses;
- Licensed marijuana stores, so long as written Physical Distancing protocols are developed and strictly implemented to limit the number of people on the licensed premises at the same time;
- Licensed liquor stores, so long as written Physical Distancing protocols are developed and strictly implemented to limit the number of people on the licensed premises at the same time;
- Airlines, taxis, other private transportation providers, and transportation support providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- Home-based care for seniors, adults, or children. Nanny and babysitting services shall not be permitted under this Order unless the nanny or babysitter (1) resides in the home of the senior, adult, or children for whom they are providing care, (2) provides medical care to the senior, adult, or children, or (3) is providing care in order to allow parents or guardians of a senior, adult or children to work for an Essential Business or perform an Essential Government Function;
- Residential establishments and facilities, including hotels, motels, and shelters for seniors, adults, and children;
- Professional services, such as legal, insurance, accounting, or tax preparation services, when necessary to assist in compliance with legally mandated activities;
- Faith-based establishments and houses of worship, including but not limited to, churches, synagogues, chapels, and mosques; however, these institutions are strongly encouraged to implement an electronic platform for services and/or more frequent services with smaller congregations;

- Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, and in accordance with existing law, childcare facilities must operate under the following mandatory conditions:
 - Childcare must be carried out in stable groups of 10 or fewer (“stable” means that the same 10 or fewer children are in the same group each day).
 - Children shall not change from one group to another.
 - If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
 - Childcare providers shall remain solely with one group of children.

A note on liquor and marijuana stores: in a late-afternoon update, Denver stated that liquor and marijuana stores must engage in “extreme physical distancing.” Although this term is undefined, it can reasonably be assumed that all patrons of such stores must remain at least six feet apart, both inside the store and outside if waiting in line to enter, and stores should provide hand-washing stations or hand sanitizer. It may include limiting occupancy to levels well below those that the fire code allows.

Minimum Basic Operations

Under Denver’s Order, individuals may leave their residence for the purposes of performing “Minimum Basic Operations.” Such operations include the following activities, so long as employees comply with social distancing requirements, to the extent possible:

- The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
- The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- The minimum necessary activities to facilitate employees of the business being able to continue filling online product orders and to process customer orders remotely.

Essential Travel

Lastly, the Order does not preclude individuals from undertaking essential travel as defined below, provided they comply with social distancing to the extent possible.

- Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
- Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.

- Travel to return to a place of residence from outside the jurisdiction.
- Travel required by law enforcement or court order.
- Travel required for non-residents to return to their place of residence outside Denver. Individuals are strongly encouraged to verify that their transportation out of Denver remains available and functional prior to commencing such travel.

Social Distancing

As used throughout Denver's Order and this Legal Alert, social distancing means, at a minimum, maintaining at least a six-foot distance from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, regularly cleaning high-touch surfaces, and not shaking hands.

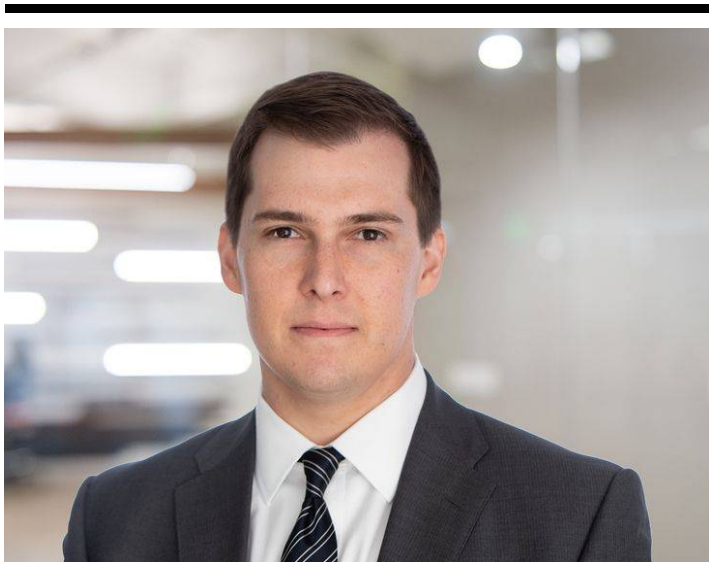
Conclusion

For now, we will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Denver](#) 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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