

## Ohio businesses face threat of restraining orders, injunctions and citations for violating the stay at home order

# CORONAVIRUS

## Labor & Employment



Ryan Neumeyer, Michael J. Matasich, Sarah Mancuso | Monday, April 13, 2020

Prosecuting attorneys at the request of divisions of the Ohio Board of Health and the State of Ohio have been seeking temporary restraining orders and injunctions to compel businesses to comply with the Stay at Home Order issued by Ohio Director of Health, Dr. Amy Acton, on March 23, 2020, and amended on April 2, 2020. Local police departments have also been issuing warnings and misdemeanor citations to businesses that violate the Stay at Home Order.

### **The Stay at Home Order and its requirements for essential and non-essential businesses**

On March 23, 2020, Acton issued the Stay At Home Order which, in part, required all persons to stay at home unless they are employed in or operating an “essential business.” Essential businesses include, but are not limited to: stores that sell groceries and medicine; food, beverage, and licensed marijuana production and agriculture; organizations that provide charitable and social services; religious entities; the media; gas station and transportation businesses; financial and insurance institutions; hardware and supply stores; mail and shipping businesses; educational institutions; laundry services; restaurants for consumption off premises; home-based care and residential facilities; professional services; supply chain manufacturers and distributors; critical labor union functions; hotels and motels; and funeral services.

All non-essential businesses and operations in Ohio were ordered to cease all activities within Ohio except “minimum basic operations,” which are: (a) the minimum necessary activities to maintain the value of the

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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; and (b) the minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences. Simply put, non-essential brick and mortar businesses were ordered to be closed to the general public.

Moreover, "social distancing requirements" must be followed by essential businesses and non-essential businesses conducting minimum basic operations. Social distancing requirements include maintaining at least a six-foot distance between individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes, regularly cleaning high-touch surfaces, and not shaking hands.

Ohio businesses covered by the Stay at Home Order include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.

The Stay at Home Order further limits the gathering of more than ten people in accordance with President Donald Trump's coronavirus guidelines issued on March 16, 2020.

On April 2, 2020, the Stay at Home Order was amended to extend its original April 6, 2020 deadline to 11:59 p.m. on May 1, 2020. The amended Stay at Home Order also mandated the closure of public places of amusement and sporting events.

### **Consequences for the failure to comply with the stay at home order**

The Stay at Home Order was issued by Acton pursuant to the authority granted to her to make special or standing orders or rules for preventing the spread of contagious or infectious diseases. Ohio Boards of Health, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township are required to enforce the Stay at Home Order and any other COVID-19 quarantine and isolation orders, and the rules the Ohio Department of Health adopts.

As such, the Ohio Department of Health established a call center and webpage for the public to report business violations of the Stay at Home Order. Sanitarians employed by divisions of the Ohio Board of Health may also visit businesses to ensure compliance with orders issued by Acton. Local police departments have also been issuing warnings and misdemeanor citations for violations of R.C. 3701.352 (Violating Orders of the Department of Health) to businesses that fail to follow the Stay at Home Order.

If an Ohio business fails to comply with Ohio Department of Health orders, it can face criminal penalties and civil liability. For example, a violation of R.C. 3701.352 is a second degree misdemeanor punishable by up to 90 days in jail, a fine up to \$750, or both. A temporary restraining order and complaint for preliminary and permanent injunction can be filed against the business in a civil court to prevent violations of an order from reoccurring. In addition, civil claims for nuisance can be brought against the business. Restaurants and bars could also lose their liquor licenses for operation in violation of an order.

We at McDonald Hopkins will counsel you to prevent your business from committing a violation of the orders in light of COVID-19 and are prepared to defend your business in the event of an alleged violation. If you have any questions or concerns regarding the impact of the Stay at Home Order on your business, please contact one of the McDonald Hopkins attorneys listed below.



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