



Update: Conducting Business Under the Governor's Shutdown Order

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It has been almost three weeks since Governor Wolf first discussed mitigation measures to stop the spread of COVID-19. The announcements by the Governor took the form of guidance which morphed into orders determining which businesses are “life-sustaining” and which are not. Now, three weeks later, a lot of the vague language and confusing concepts have been clarified.

Where do we stand at the end of March regarding conducting business in Pennsylvania?

The Governor posted substantial guidance as to the meaning of his order [here](#). This guidance is updated almost daily, but unfortunately no indication of what was changed or what was added is included, leaving businesses to page through vast amounts of information in the hope of noticing a difference. Some key parts of what is included in the guidance is as follows:

What is a life-sustaining business?

The [list](#) has not been materially changed since March 24, 2020. However, guidance has been posted to help businesses understand the list.

The Governor confirmed that the list is broken down by the North American Industry Classification System (NAICS). Therefore, when looking at the categories on the list, you must first know your own industry sector under the NAICS classification. If your business' NAICS classification falls within a category that is listed as “life-sustaining,” you are not required to close physical operations as long as you adhere to social distancing restrictions and taking other mitigation measures to ensure the health and safety of employees and patrons.

Can essential personnel access non-life-sustaining businesses?

Yes. Essential personnel are permitted to engage in critical functions such as processing payroll and insurance claims, maintaining security, maintaining critical building systems, maintaining compliance with federal, state, or local regulatory requirements, and engaging in similar limited measures, but only on an occasional and as-needed basis. Your essential personnel must follow social distancing and COVID-19 mitigation guidance provided by the PA Department of Health and CDC. The Governor has confirmed that such activities do not require a waiver.

As an employer, you should develop a list of critical functions and designate essential personnel who can perform these functions. You should also develop a schedule which minimizes the times during which employees will overlap at work to minimize contact and comply with all applicable health guidance.

Are Waivers Being Granted?

Yes. Waivers are being granted. The preferred manner of submitting a waiver is to request a waiver via the [online portal](#) available at the Department of Community and Economic Development website. Key to a successful waiver application is to include a detailed explanation of how your business supports the supply chain of goods or services necessary to maintain operations at a business on the life-sustaining list or supports critical infrastructure. Include in the application a detailed explanation of how your business will comply with social distancing and COVID-19 mitigation guidance provided by the PA Department of Health and CDC guidelines if allowed to operate. Businesses are not allowed to operate until a waiver is approved and provided. Businesses approved for a waiver will receive written confirmation, which they should keep available to display if questioned.

Is the Order Being Enforced?

Yes. Enforcement is being handled through both local and state level law enforcement and regulatory agencies. However, the Governor's guidance specifically says that "We also expect that any discipline for violation of the orders will be progressive discipline that begins with a warning to any suspected violator. Furthermore, enforcement should be prioritized to focus on businesses where people congregate."

This is a rapidly evolving situation from both a legal and public health standpoint. Because the guidance from Harrisburg changes frequently, you should always make sure that you follow the most up to date guidance. Wisler Pearlstine is committed to providing up to date, practical legal advice to our clients on how to manage the legal implications arising from the COVID 19 virus. If you have any questions, please contact one of our attorneys.

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The Wisler Pearlstine team of employment attorneys is ready to address your COVID-19 questions and concerns. Please contact any of us if you have concerns about the impact of COVID-19 in the workplace.

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