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TO: The Ohio Manufacturers' Association
FROM: Bricker & Eckler
DATE: March 22, 2020
RE: Ohio COVID-19: Stay at Home Order

On March 22, 2020, Governor Mike DeWine announced that Ohio Department of Health Director Amy Acton signed a Health Director's order he referred to as a "stay at home" order. Other states have called similar orders "shelter in place orders," but they are essentially the same.

The Director's Order takes effect at 11:59PM March 23, 2020 and is in effect until 11:59PM on April 6, 2020.

The Ohio Order appears to provide broad language permitting Ohio's manufacturers to remain in operation provided that 1) it meets the criteria of an Essential Business and Operation AND 2) the entity can operate while following the specific social distancing requirements in Section 15 of the Order.

Essential Businesses and Operations

The United States Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA) issued guidelines¹ on what may constitute critical infrastructure sectors and essential employees. Some states with shelter in place orders in effect elected to incorporate by reference the CISA guidance. Other states attempted to create their own lists. Ohio, similar to Illinois, used the CISA guidance as a baseline and added additional sectors and industries.

The Order identifies essential businesses and operations and encourages those to remain open with only essential employees and comply with social distancing to the greatest extent feasible

Impact to Manufacturing and Related Supply Chains

The Order is very similar to Illinois' shelter in place order in that it broadly authorizes manufacturing and related logistics and supply lines.

Similar to Illinois, the CISA guidance is incorporated by reference and all businesses, operations, and employees described in the CISA guidance are included as essential in the Director's Order. The Order then goes on to expand beyond the CISA guidance, which is critical as the CISA guidance has some limitations on suppliers and manufacturing.

¹ <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

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The Order includes as Essential Businesses and Operations:

- Manufacturing related to healthcare (Section 7)
- Any Manufacturing including in the CISA guidance (Section 12.a)
- Manufacturing related to food and beverage production (Section 12.c)
- Manufacturing and supply chains that supplies other Essential Businesses and Operations, including but not limited to, computers, IT equipment, household appliances, paint, glass, electrical equipment, ingredients and components, chemicals, soaps and detergents, and personal hygiene products (section 12.q)
- Manufacturing, distribution and supply chains that produce and supply critical products to critical industries as identified in the Order or entities that manufacture, distribute, or supply products for Essential Business and Operations as identified by the Order (12.v)

The language in Section 12.v is nearly identical to the Illinois executive order that the OMA preferred as opposed to other states' orders.

The Order also includes as essential businesses and operations the critical trades (Section 12.k). Specifically it mentions, but does not limit itself to, building and construction tradesmen and women such as plumbers, electricians, painting, and other service providers who are necessary to maintain the safety, sanitation, and essential operation of Essential Activities, and Essential Businesses. The Order also designates critical labor union functions as essential in Section 12.w.

Enforcement and Additional Guidance

The Order will be enforced by local departments of health and local law enforcement. As mentioned above, the order takes effect at 11:59PM March 23, 2020 and expires on 11:59 PM on April 6, 2020. Local health departments are empowered to answer questions in writing related to the Director's Order.

The Order is silent on whether a business or entity need to apply for status as an Essential Business or Operation. Similarly, there is no requirement for employees of such a business or operation to carry any indication, identification, or notice that they are an essential employee.

The Director's Order requires essential businesses and operations and businesses engaged in Minimum Basic Operations to observe social distancing by:

- Designate six foot distances with signage, tape, or by other means.
- Provide hand sanitizer and sanitizing products.
- Separate operating hours for at-risk populations.
- Provide information online noting whether the facility is open and how best to reach the facility and continue services by phone or remotely.

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Also provided in the Director's Order is a social distancing checklist for businesses and employers:

- Permit as many employees as possible to work remotely.
- Actively encourage sick employees to stay home until they are free of fever (without medication) for at least 72 hours and symptoms have improved for at least 72 hours and at least 7 days have passed since symptoms first began.
- Ensure sick leave policies are up to date.
- Separate employees who have acute respiratory illness symptoms.
- Reinforce messaging on cough and sneeze etiquette, staying home when ill, and good hand hygiene.
- Frequently perform cleaning of commonly touched surfaces.
- Be prepared to change business practices to maintain critical operations.

Conclusion

The Stay at Home Order encourages Essential Businesses and Operations to remain in business with only essential employees needed to maintain operations, provided that you can operate while meeting the social distancing requirements contained in the order. This includes manufacturers, suppliers, distributors and other aspects of the supply chain that support or otherwise supply what the order deems an Essential Business or Operation.

If an entity can qualify as an Essential Business and Operation, then the entity can operate, but only if the entity can also operate within the constructs of the social distancing requirements.