**Highlights from Ohio’s May 1, 2020 Revised Stay at Home (Stay Safe) Order**

**By Aretta K. Bernard & Sherri Warner**

On May 1, 2020, Dr. Amy Acton issued a new stay at home/stay safe order effective until midnight on Friday, May 29, 2020. This order permits certain businesses in Ohio to reopen and operate as long as they can comply with the requirements set forth in the order. The Order sets forth the following reopen dates for specific industries:

* Non-Essential Medical Procedures – Re-Open May 1st
* Manufacturing, Distribution & Construction – Re-open May 4th
* General Office Environments – Re-Open May 4th
* Retail – Re-Open May 12th

The following categories of businesses are all under previously issued closure Orders and at this time have no re-open date:

* Schools (Order dated 4/29/20)
* Restaurants & Bars – Carry Out Only (Order dated 3/15/20)
* Personal Appearance/Beauty – (Order dated 3/19/20)
* Adult Day Support & Vocation Rehab – (Order dated 3/21/20)
* Older Adult Day Care & Senior Centers – (Order dated 3/2/20)
* Child Care Services – (Order dated 3/24/20)
* Entertainment/Recreation/Gymnasiums – (Order dated 3/21/20 & Order dated 3/17/20)

Businesses that are ordered to remain closed may still engage in basic operations to maintain the value of their inventory, preserve the condition of their business, support employees working from home and ensure continued businesses functions.

Ohioans are still ordered to stay at home unless they are participating in an activity permitted by the Order. When outside of the home they are still required to maintain social distancing. People are allowed to travel to:

* Engage with or support a business allowed to operate under the Order;
* Care for elderly, minors, dependents or those with disabilities;
* Pick up or receive educational materials, meals or related services from an educational institution;
* Return to a place of residence from outside the state;
* Comply with a court order or law enforcement; and
* Return to your home out of state.

Any gathering of more than ten people continues to be prohibited. As with the last Order religious facilities and groups are exempted from the Order as are those engaged in first amendment rights and activities of the media. Funerals and weddings can be performed but any type of social gathering after the service is prohibited.

The order to self-quarantine if you have engaged in interstate travel is still in place. Those who are positive or presumptively positive for the virus can only enter the state to obtain medical care or if they are a permanent resident of the state going home.

Businesses operating must require that employees wear facial coverings with the following exceptions:

* Coverings are prohibited by state/federal law or regulation;
* Coverings violate documented industry standards;
* Coverings are unadvisable for health reasons;
* Coverings are a violation of business’s documented safety policies;
* Coverings are not required when an employee works alone in an assigned work area; and
* Coverings are functionally impracticable.

Businesses must have a written justification as to why an employee is not wearing a facial covering and must provide the written justification upon request.

Medical Procedures

The Order allows non-essential surgeries and procedures to resume, however providers must:

* Follow infection control guidelines as issued by the CDC and ODH;
* Maintain adequate PPE in their facility;
* Create a plan to conserve PPE which may include decontamination and reuse protocols;
* Evaluate access to supply chain for supplies should an unexpected case surge occur;
* Frequently inventories PPE;
* Has a process to timely test patients and staff for COVID-19;
* Continue to use telehealth services when possible; and
* Develop an outreach plan for patients that recognizes the disproportionate impact of the virus on minority populations, engages patients in a discussion on the risk of contracting the virus and shares the decision making of the timing of procedures with patients.

Social Distancing Requirements

The Order requires that people maintain at least a six-foot social distance from each other, wash hands, use hand sanitizer, cover sneeze and coughs with sleeve or elbow, clean high touch areas and not shake hands. Businesses must:

* Designate six-foot distances;
* Provide hand sanitizer;
* Have separate hours for vulnerable populations; and
* Post information online on facility hours and how to reach remotely.

All businesses/employers, including for-profit, non-profit, educational entities and governmental entities (other than federal) who are open must use this checklist:

* Encourage employees to work from home if possible;
* Encourage employees who are sick to remain at home. Should an employee be sick require that they not return to work for at least seven days after symptom first appeared and are fever and symptom free, without the use of medication, for at least 72 hours. Employers are not to require a healthcare provider’s note to validate the foregoing illness or return to work if the employee had an acute respiratory illness;
* Have up to date, flexible and non-punitive sick leave policies that allow employees to take care of themselves, children and family members. Encourage employees to do a self-assessment each day;
* Separate employees who appear to have respiratory illness and send home;
* Reinforce messages regarding social distancing and staying at home. Provide hand sanitizer, tissues and no-touch receptacles;
* Have commonly touched surfaces cleaned frequently with appropriate cleansing agents and provide wipes so that commonly used surfaces can be cleaned by employees;
* Be prepared to change businesses practices to maintain critical business functions; and
* Comply with all guidelines from the CDC and the ODH.

Additionally, there are industry specific requirements for businesses that fall into the following categories:

* General Office Environments;
* Manufacturing, Distribution & Construction;
* Retail; and
* Health Care and Hospitals.

These include requirements like maintaining minimum 6-feet distances between employees or installing barriers, having employees do daily health assessments, sending home sick employees, staggering work times, continued working from home, disinfecting surfaces and reducing shared work materials. Complete industry specific guidance can be found [here](https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/).

The language of the Order does not allow, for the most part, a business to operate unless it can meet all of the required social distancing/safety precautions. Employees and the general public have the ability to file complaints with law enforcement and their local health departments. Businesses are going to need to be able to justify their actions should law enforcement or a local health department ask questions regarding their operations. The business can be cited if they fail to implement the required provisions of the Order.

The Order continues the use of the Dispute Resolution Committee established by the Ohio Department of Health. This committee does not address disputes between entities and law enforcement, rather it settles difference of interpretation by local health departments providing uniformity of enforcement across the state.

The Order provides for enforcement by state and local law enforcement. It specifically cites ORC 3701.352 and ORC 3701.56. Law enforcement with questions may contact their Ohio Department of Health or their local health department. Local health departments are NOT required to provide advisory opinions to nongovernmental entities. Those violating the Order are guilty of a second-degree misdemeanor and can be fined up to $750 or jailed for 90 days.

We continue to monitor the actions of the state and are prepared to answer questions you may have regarding this Order, including best practices for implementation and how other laws and federal and state agency guidance may interact with these requirements. Please reach out to one of our Roetzel attorneys should you need additional information.

**Lewis Adkins, Jr.**

216.615.4842 │ ladkins@ralaw.com

**Ericka Adler**

312.582.1602 │ [eadler@ralaw.com](mailto:eadler@ralaw.com)

**Aretta Bernard**

330.849.6630│ [abernard@ralaw.com](mailto:abernard@ralaw.com)

**Bob Blackham**

216.615.4839│ [bblackham@ralaw.com](mailto:bblackham@ralaw.com)

**Monica Frantz**

216.820.4241│ [mfrantz@ralaw.com](mailto:mfrantz@ralaw.com)

**Sara Hall**

239.213.3867│ [sfhall@ralaw.com](mailto:sfhall@ralaw.com)

**Paul Jackson**

330.849.6657│ [pjackson@ralaw.com](mailto:pjackson@ralaw.com)

**Christina Kuta**

312.582.1680│ [ckuta@ralaw.com](mailto:ckuta@ralaw.com)

**Dave Oeschger**

330.849.6692│ [doeschger@ralaw.com](mailto:doeschger@ralaw.com)

**Stephanie Olivera Mittica**

330.849.6671│ [smittica@ralaw.com](mailto:smittica@ralaw.com)

**Sherri Warner**

330.849.6629│ [swarner@ralaw.com](mailto:swarner@ralaw.com)

**Brad Wright**

330.849.6629│ [bwright@ralaw.com](mailto:bwright@ralaw.com)

**Mike Yashko**

239.338.4249│ [myashko@ralaw.com](mailto:myashko@ralaw.com)

**Sherri Warner**

614.723.2110│ [swarner@ralaw.com](mailto:swarner@ralaw.com)

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