

SAFER AT HOME ORDER – FREQUENTLY ASKED QUESTIONS

Note: The original Safer At Home Order (Emergency Order #12) was in place from March 25, 2020 through 8:00 a.m., April 24, 2020. On April 16, 2020, Emergency Order #28 was issued, which is effective from 8:00 a.m., April 24, 2020 through 8:00 a.m., May 26, 2020.

These answers were updated to be consistent with Emergency Order #28.

[Link to Emergency Order #28](#)

Q1: Were there changes under Governor Evers' new Safer at Home Order (Emergency Order #28) to Housing Construction.

A: Yes. Governor Evers Extends Safer at Home Order With Subtle Changes To Housing Construction

Governor Evers just issued Emergency Order #28, which extends the Safer at Home Order (Emergency Order #12) with some minor changes through 8:00 a.m. May 26, 2020. Emergency Order #28 leaves in place all of the main requirements of the Safer at Home Order. The new Order has made some subtle changes relating to “aesthetic or optional” work that will affect WBA’s members. The following revisions do not go into effect until 8:00 a.m. on Friday, April 24, 2020.

Under Emergency Order #12, “housing construction” is an Essential Business and Operation, but included the ambiguous limitation “that optional or aesthetic construction should be avoided”. Under Emergency Order #28, housing construction is still an Essential Business and Operation, but the limitation relating to optional and aesthetic construction has been changed to state: “optional or aesthetic construction should be avoided except as permitted as a Minimum Basic Operation”. Although this would appear to limit some of the types of work that could be done by contractors, there has been some flexibility added to Minimum Basic Operations. Emergency Order #28 adds a provision to Minimum Basic Operations that provides:

“Aesthetic or optional exterior work. Minimum Basic Operations may include aesthetic or optional exterior residential construction and lawn care, if all the operations are performed by one person in a room or confined space, including a car or truck. No more than one employee or worker may be on the site at a time. Services may not require a signature by the recipient. Aesthetic or optional exterior work requiring more than one person on the site are prohibited.”

There has been a lot of confusion as to what work can and cannot be done under the existing Emergency Order #12 relating to remodeling and lawn care. On the positive side, starting on April 24, 2020, it is clear that aesthetic and optional exterior lawn care and construction is allowed, as long as it can be done by one person (it is not crystal clear in the language cited above but it is clearer in the Governor’s FAQ follow up).

The question has already been asked whether this allows remodelers to do more or less work. Tough to answer. The original Emergency Order #12 was ambiguous as it said that optional or aesthetic construction “should be avoided”. The phrase “should be avoided” was being enforced differently by different municipalities. Under the new Order, we now know that aesthetic or optional exterior work may be done if it is done by one person. Accordingly, this is an improvement because no municipality should be shutting down this type of work.

We are still left with the issue of what exactly is “optional or aesthetic construction”, and what does it mean that it “should be avoided.” For example, we believe that aesthetic construction may be done when finishing a newly constructed home so that the house is not left unfinished. The same construction probably should not be done if it is purely aesthetic as a home improvement project. Since this area is still gray, we expect that each municipality will view it differently when issuing permits or confronting contractors that are doing work at a residence.

Q2. The Emergency Order #28 addresses aesthetic or optional residential construction and lawn care, and states that aesthetic or optional exterior residential construction and lawn care may be performed, “if all the operations are performed by one person in a room or confined space.” What does that mean?

A. The meaning of this paragraph is not clear. The paragraph addresses the one person rule in two places. It allows aesthetic or optional exterior work so long as it can be done by one person in a room or confined space, and it also says there may only be one person on the site. The FAQ that accompanies the Emergency Order states that “Aesthetic or optional exterior lawn care or construction is allowed, so long as it can be done by one person.” The intent is that exterior work being done by one person is allowed. We believe the one person in a room or confined space language just emphasizes the one person rule for purposes of when the exterior work is being done from inside a building (i.e., reaching out a window, etc.), on a balcony, on a roof, or when operating equipment. Our advice is to stick to the one person rule when doing aesthetic or optional exterior lawn care or construction, and you should be in compliance under this provision.

Q3: How do I know if I am “essential” under the Safer at Home Order?

A: The WBA has received a number of questions from members relating to whether their business is an Essential Business and Operation under the Safer at Home Order. Understandably, many business owners are having trouble understanding the Order, and how it applies to them. We will try to provide the steps in understanding how your business is treated under the Order.

The analysis has become further confused by statements made by a deputy to the Chief of Staff in the Governor’s office to the Milwaukee Journal Sentinel relating to essential work that are not consistent with the Order itself. We believe there may be further clarifications soon. If and when new clarifications come out, we will update you as soon as possible.

Under the Order all non-essential business and operations must cease, and all individuals are to stay at home or in their place of residence. People may leave their residences to operate “Essential Businesses and Operations.” Do not be confused by the word “essential”. The work you do does not need to be “essential” for any particular purpose. The Governor in his Order created the category of “Essential Businesses and Operations”. It is a title for businesses that can continue to operate. If your business fits under this category, it can operate. There is no further analysis as to whether the work you do is essential for any particular purpose.

There are a number of areas where home construction and its related businesses are addressed that most likely apply to the WBA’s members. One easy place to look is in the list of Essential Businesses and Operations under section 13 of the Order. Under section 13, it includes: “Hardware and supplies stores. Hardware stores and businesses that sell electrical, plumbing, heating, and construction material.” If your business fits under the definition of “hardware and supplies stores”, your business is an Essential Business and Operation that may continue to operate subject to the requirements that are imposed on Essential Businesses and Operations. There is no further analysis to determine whether what you do is “essential” to any particular project or thing.

Another provision under section 13 is the “critical trades”. There is a laundry list of critical trades including “plumbers, electricians, carpenters, laborers, sheet metal, iron works, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, forestry and arborists. . .” If you are one of those listed trades you are an Essential Business and Operation, and you may continue to operate subject to the requirements imposed on Essential Businesses and Operations. There is no further analysis to determine whether what you do is “essential” to any particular project or thing.

Under the critical trades there is one last catch-all provision that says “other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.” This provision is a little trickier. If you are not listed in the critical trades, you may still be considered a “critical trade” if you are “necessary” to maintaining the safety, sanitation, and essential

operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations. For example, we believe that a company that does asbestos or lead paint removal would likely qualify because it is necessary to the safety, sanitation, and essential operation of residences. It also mostly likely provides those services to other Essential Businesses and Operations.

Finally, the one that we concentrated on the most in prior posts is the definition of Essential Infrastructure, which includes “housing construction, except that optional or aesthetic construction should be avoided except as permitted as Minimum Basic Operations.” Under the Order, businesses that are part of the Essential Infrastructure are Essential Businesses and Operations. This provision is the one that will allow most of the WBA builder members to operate even if they do not self-perform the work. Under the Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provide, operate, maintain, and repair Essential Infrastructure. This means that if you provide any service or perform any work necessary to offer, provide, operate, maintain, and repair “housing construction”, then you are Essential Infrastructure and an Essential Business and Operation; however, you should avoid optional or aesthetic construction.

Under the Order, businesses are supposed to self-determine whether they meet the criteria, which is difficult to do. We can apply this to a few businesses, but please understand that the government may disagree with our analysis or may issue further clarifications that change the analysis.

- Insulation Installers. Do insulation installer provide a service that is necessary to maintaining the safety, sanitation, and essential operation of a residence? We believe the answer is most likely yes, and it would then qualify as an Essential Business and Operation as a critical trade. Further, does an insulation installer “provide any service or perform any work necessary to . . . maintain, and repair housing construction”? We believe the answer is most likely yes, and it would qualify under the housing construction provision of Essential Infrastructure, which means it is an Essential Business and Operation.
- Window coverings. It is difficult to see how a company that just sells window coverings meets either the definition under “housing construction” or “critical trades.” We also think it would be difficult to claim that window coverings are construction materials. Accordingly, our best guess is that a window coverings store is not an Essential Business and Operation. However, this question raises an interesting point. We do believe that an Essential Business and Operation such as a hardware store that is properly open because it sells construction materials, but also carries window coverings, may continue to sell window coverings.
- Garage Door Installers. A garage door installer may qualify as a Critical Trade as it is work that is necessary to maintaining the safety of a residence. It may also qualify under the housing construction provision because it provides work necessary to operate, maintain, and repair “housing construction”. In this case, optional or aesthetic work should be avoided.
- Like the analysis for insulation installer, excavating, concrete, fencing, erosion control, grading, and similar businesses are also likely Essential Businesses under the Critical Trade and housing construction provisions.

Obviously, these are difficult times. You should, above all else, use common sense when determining whether you meet the criteria of an Essential Business and Operation. If you have doubts, you should contact an attorney before taking actions that could be deemed a violation of the Order. Additional questions regarding other businesses are addressed below.

Q4: Is new construction allowed under the Order.

A. We are in uncharted water, so we are constantly look for clarification. As set forth in previous posts, the order clearly includes housing construction as Essential Infrastructure. Further the Order makes clear that “Essential Infrastructure” shall be construed broadly to avoid any impacts to essential infrastructure. The only limitation we see in the order is where it states: “housing construction, except that optional or aesthetic construction should be avoided”. There is no explanation as to what is “optional or aesthetic” housing or what the Governor meant by “should be avoided”.

Since the order specifically says that Essential Businesses and Operations are encouraged to remain open, and that Essential Infrastructure should be read broadly – it is our position that the home construction industry is to stay open. To stay open would mean there needs to be new construction. We read the optional or aesthetic construction narrowly to mean optional and aesthetic construction to be something small on an existing house that can easily be done later.

If we read the term “optional or aesthetic construction” broadly to say it prohibits new construction, then housing construction would be essentially shut down.

It is our position that since the intent of the Governor’s Order was to keep “housing construction” as an Essential Business – saying no new construction would defy that intent. If the governor intended to have no new home construction, he would have just written it that way.

Based on the above interpretation, it is the WBA’s position that new construction can go forward.

Q5: Can remodeling businesses stay open under the Governor’s Safer at Home Order?

A: This is a two-part answer. First, under the new Safer at Home Order (Emergency Order #28), if the contractor is only going to have one person on site doing exterior aesthetic or optional construction, then the answer is yes. Under the Minimum Basic Operations exception to the Safer at Home Order, a contractor may do aesthetic or optional exterior residential construction so long as there is only one person on the site.

Second, and less clear, is whether a contractor may use two or more employees to do remodeling at a home site or within the home. Since there would be more than one employee at the site, the Minimum Basic Operations exception would not apply. Therefore, in order to be able to construct the new garage with more than one employee, this work would need to fall under one of the Essential Businesses and Operations exceptions of the Safer at Home Order.

We have addressed this issue of whether home improvement projects are allowed under the Order, and it is a gray area. Under the Order, “housing construction” is an Essential Business and Operation.” The full phrase states “housing construction, *except that optional or aesthetic construction should be avoided except as permitted as a Minimum Basic Operation*”.

It is very important to note that whenever the Order prohibits conduct, it expressly and clearly states so. It will say individuals “are ordered to stay at home” or gatherings “are prohibited” or all entities “shall meet Social Distancing Requirements”. In contrast, “should be avoided” is ambiguous. Literally, it does not say that optional or aesthetic construction “is prohibited” except as permitted as a Minimum Basic Operation.

The best practical answer we can give is that a contractor needs to use common sense. Each municipality is going to interpret the Order when enforcing it. Accordingly, any contractor needs to be cognizant of the fact that different municipalities may interpret and enforce the Order differently. We do not see the phrase “*except that optional or aesthetic construction should be avoided except as Permitted as a Minimum Basic Operation*” as prohibiting remodeling or home improvement. If the Order intended to prohibit it, the Order would have specifically said so. Instead, our best guess is that this portion of the Order is asking that housing construction businesses use common sense to avoid optional or aesthetic construction. Since it is not prohibited, then in some circumstances it is allowed. Common sense would dictate that if a home improvement project like outdoor work on a garage or outbuilding can be done safely (i.e., meeting all the social distancing requirements, etc.), then it may not be prohibited. Certainly, if the remodeling or home improvement is not optional (i.e., a pipe burst or the bath tub is leaking causing damage to the house), then it is allowed.

We need to stress, this language is not clear. The default under the Safer at Home Order is that optional or aesthetic housing construction should not be done. By doing home improvement projects with more than one person on site, you bring yourself into a gray area that could lead to an encounter with law enforcement. To date, we have seen municipalities and law enforcement interact reasonably with contractors as to the interpretation and enforcement of the Order. If you are told to stop work because the

municipal planner or law enforcement officer interprets the Order more narrowly to prohibit your work, you should cooperate and follow their orders. If you wish to challenge an interpretation, that should be done by reaching out to the policy makers at the municipality and at law enforcement to have a discussion as to Order and its interpretation.

Q5: May residential roofers continue to operate under the Governor's Safer at Home Order?

A. Yes. In most cases residential roofers can continue to operate. There are two areas in the Order that likely apply to residential roofers.

First, residential roofing on new construction or replacing an existing roof is likely an "Essential Infrastructure". Governor declared that "housing construction" is part of the "Essential Infrastructure". The term "housing construction" is not defined so we look to its common understanding. A common understanding of "housing construction" certainly would include installing a roof. Moreover, the Order states that "'Essential Infrastructure' shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined." The Governor's order does say that "optional or aesthetic construction should be avoided." As stated in a previous post, this phrase is ambiguous. However, we do not believe that the replacement of a roof that is damaged or nearing the end of its life would be the type of optional or aesthetic construction that should be avoided. Common sense should be used to avoid doing work that is optional or aesthetic.

Second, the Order specifically includes "critical trades" as Essential Businesses that may continue to operate. "Critical trades" include but are not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations. It seems clear that roofing installers would be included under the critical trades especially since maintaining, repairing, and replacing a roof is necessary to maintaining the essential operation of a residence.

For the replacement of an existing roof, we do not believe it needs to be failing (i.e., leaking, etc.) to be replaced. If the roof has reached the end of its lifespan, it is necessary (i.e., not optional) to the operation of the residence that it be replaced before there is damage to the home.

Since residential roofing is part of housing construction and part of the critical trades, it can continue to operate. This would include being able to have estimators measure roofs, etc., to provide bids to the homeowners. However, you cannot engage in door-to-door solicitation, regardless of its purpose.

Q6: May construction material supply stores such as lumber, flooring, paint, lighting, electrical, and plumbing distributors and retailers continue to stay open and operate under the Governor's Safer at Home Order?

A: Yes. The Governor's Order specifically lists "hardware and supplies stores" as Essential Businesses and Operations. The provision applies to "hardware stores and businesses that sell electrical, plumbing, heating, and construction material." The term "construction material" provides a broad "catch-all" for stores that supply the construction industry. Accordingly, that provide building materials, including flooring, wall coverings, lighting, and like material used in commercial and housing, are allowed to maintain normal operation.

Hardware and supplies stores as Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

Q7: If employees who live together (part of the same household) are taking their private vehicle to a jobsite, are they allowed to have 2 in their vehicle?

A: Yes. Section 1 of the Order specifically excludes individuals residing in a single living unit or household from the social distancing requirement of maintain six feet of distance between persons. This exception extends to Essential Activities. So, traveling to work at a jobsite (assuming it is an essential business activity) in a shared vehicle is permissible. However, these individuals should be prepared to prove they are living together if asked by an authority. Employers may also want to consider if they want to discourage this practice based on the potential that they are creating the perception of a violation.

Q8: Can you have more than one employee in a vehicle?

A: It depends. Essential businesses are required, “to the greatest extent feasible, comply with Social Distancing Requirements as defined in this Order between all individuals on the premises, including but not limited to employees, customers, and members of the public.” There may be vehicles that allow 6 feet or more between occupants. If not, the question becomes what is feasible. If employees can drive themselves, or multiple work vehicles are available to transport employees, these resources should be utilized. Certainly, vehicles with multiple occupants will draw the attention of authorities who will have to make a judgment call as to whether the employer is in compliance or not.

Q9: Can a jobsite have persons performing essential work at the same time that a person is on site performing optional or aesthetic work?

A: There is nothing in the order or the questions and answers issued by Evers’ Administration which say the performance of essential work at a job site and the performance of optional or aesthetic work are exclusive of each other or cannot be conducted at the same time. For example, a business could have a crew onsite to replace a sewer latera while at the same time having one employee on site mowing. However, this could draw the attention of authorities, so businesses should try to limit this from happening, or at least be prepared to be able to clearly demonstrate that only one person is involved in the optional or aesthetic work.

Q10: How does the construction of a pool apply under the Order?

A: We have provided several responses relating to “housing construction” being considered Essential Infrastructure under the Safer at Home Order. If the pool is part of a home construction, then the contractor completing the pool should be able to remain open to complete construction of it. The pool contractor would be considered part of “housing construction”. As part of housing construction, the pool contractor would be an Essential Business and Operations.

We have also previously pointed out that the provision that addresses housing construction states “except that optional or aesthetic construction should be avoided.” As previously stated, common sense needs to be used by businesses. A pool that is being constructed as part of new housing construction likely qualifies as being allowed under the Order. We don’t believe that a builder must leave a new home unfinished under the Order. However, a person simply wanting to construct a new pool on a residence, should be avoided.

Q11. May a mason stay open to do stonework under the Governor’s Safer at Home Order? If yes, what if some of the work is decorative?

A1. Yes. Masonry is a specific trade called out as an Essential Business and Operation. Under the Order, the Governor designates “Critical trades” to include plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, forestry and arborists, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.

A2. For the specifically called out critical trades such as masonry, there is not limitation on the work that they can do.

A question was rated about the requirement that the work be “necessary to maintaining the safety, sanitation, and essential operation of residences . . .” This provision does not apply to the listed trades such as plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, etc. It only applies to limit the catch all category of “other service providers”.

Governor Evers deemed masonry an Essential Businesses and Operation. There is no additional determination that needs to be made by a mason to stay open and continue working.

Q12. Are landscaping businesses allowed to operate?

This is a two part answer.

A1: Exterior lawn care may be done by one person on site under the Minimum Basic Operations exception.

A2: Landscaping beyond law care has become an area of flux under the State’s Safer At Home Order.

- March 24, 2020. The Governor issued his Safer At Home Order. The Order did not specifically address “landscapers” or “landscaping” in it. The Order also incorporated as Essential Businesses and Operations any business or worker identified in the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA), Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, updated March 23, 2020, and any subsequent versions of this Memorandum. The CISA Memorandum also did not specifically address “landscapers” or “landscaping”.
- March 24, 2020. The Governor issued his FAQ providing guidance as to the Order, which stated that “Landscape businesses are not considered essential businesses or operations. Staff can perform basic operations as defined in the order.”
- March 28, 2020. The CISA issued a subsequent version of its Memorandum, which included “landscapers” as part of the Essential Critical Infrastructure Workforce. Since the Governor’s Order stated that any subsequent versions of the Memorandum would be included into the Safer At Home Order, the addition of landscapers into the Memorandum meant that landscapers now became Essential Businesses and Operations under the Safe At Home Order.

Accordingly, as of March 28, 2020, the Governor’s FAQ stated that landscaping was not an Essential Business or Operation, but by operation of the new CISA Memorandum it did make them Essential Business or Operation.

On March 31, 2020, the Governor issued a revised FAQ. In the revised FAQ, it states:

“Landscapers, greenhouses, and their suppliers are considered essential businesses or operations, so long as the service is necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings. If a landscaping, greenhouse, or supplier is not necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings, you may still continue Minimum Basic Operations, including fulfilling nonessential deliveries, mailing parcels, or receiving parcels, if it can be done by one person in a room or confined space, including a car or truck. Delivery and parcel services cannot require a signature by the recipient. Other services or activities requiring more than one person may only continue via phone or virtually.”

It is not crystal clear under the Governor’s description exactly what services are allowed. We believe that a large portion of work that landscapers provide would likely be considered essential to operation of residences. The Uniform Dwelling Code has specific requirements regarding stabilizing yards and erosion control. It is likely that the landscaping businesses could provide the grading, erosion control measures, and other services to meet the requirements of the UDC to allow for occupancy. In addition, landscaping businesses can likely do the excavation, grading, stormwater, and other similar types of construction work to maintain safety, sanitation, and essential operation of the residence.

However, landscapers should exercise sound judgment in choosing the work they perform. The CISA Memorandum advises that “. . . owners and operators are expected to use their own judgement on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support. **All decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions.**” Installing flower beds and non-essential routine maintenance that can be put off until the Order ends on April 24, 2020 should not be done.

Q13. Are garden centers considered essential under the new Safer at Home Order #28?

A: Yes, so long as you can demonstrate that you sell products that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings. In addition, stores that sell hardware and supplies are considered essential businesses pursuant to Section 13, Essential Businesses and Operations: “hardware stores and businesses that sell electrical, plumbing, heating, and construction material.” As garden centers sell hardware in various forms, most notably tools, it makes sense that they are included as well.

This question appeared in the Safer at Home FAQs updated by the Evers Administration on April 16. The answer there also emphasizes the sale of products that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings.

“Are greenhouses and retail landscaping businesses allowed to operate?”

Greenhouses, retail landscaping businesses and their suppliers are considered essential businesses or operations, so long as the service is necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings. If a greenhouse, retail landscaping business, or supplier is not necessary to maintaining the safety, sanitation, and essential operation of residences, businesses, and buildings, they may still continue Minimum Basic Operations, including fulfilling nonessential curbside pick-up, deliveries, mailing parcels, and receiving parcels if it can be done by one person in a room or confined space, including a car or truck. Services cannot require a signature by the customer.”

The above appears to suggest that if there is nothing the business sells that is essential the store can at the very minimum provide curbside pickup of non-essential products.

Note that the order also states that essential activities for which residents can leave their home includes purchasing, “by way of example only and without limitation: canned food, dry goods, fresh fruits and vegetables, gasoline, propane, 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.*” (11. (b)). Certainly, this broad definition captures many garden center products. For example, many people rely significantly on a home garden to augment their food needs, in addition to the many types of tools and other hardware materials that are sold at garden centers.

Q14: Must garden Centers provide only non-contact deliveries and "curbside pickup"?

A: No. Order #28 requires that essential stores *consider* establishing curbside pick-up to reduce in store traffic and mitigate outdoor lines. It does not require implementation of curbside service. However the Order does include new language limiting the number of people who can be inside a store:

- For stores with less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the local municipality.
- For stores of more than 50,000 square feet: a. Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. b. Offer at least two hours per week of dedicated shopping time for vulnerable populations, which for

purposes of this Order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

- Establish lines to regulate entry in accordance with occupancy restrictions above, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also use alternatives to lines, including allowing customers to wait in their cars for a text message or phone call and scheduling pick-ups or entries to the store.

Keep in mind that Essential Businesses including a garden store must still comply with the general safe business operations which include:

- To the greatest extent feasible, comply with Social Distancing Requirements as defined in this Order between all individuals on the premises, including but not limited to employees, customers, and members of the public.
- Restrict the number of workers present on premises to no more than is strictly necessary to perform the essential operation.
- Increase standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
- Adopt policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.

Q15: May a contractor construct a new garage at an existing home under the Safer at Home Order?

A: This is a two-part answer. First, under the new Safer at Home Order (Emergency Order #28), if the contractor is only going to have one person on site to build the garage then the answer is yes. Under the Minimum Basic Operations exception to the Safer at Home Order, a contractor may do aesthetic or optional exterior residential construction so long as there is only one person on the site.

Second, and less clear, is whether a contractor may use two or more employees to construct a new garage at an existing home. Since there would be more than one employee at the site, the Minimum Basic Operations exception would not apply. Therefore, in order to be able to construct the new garage with more than one employee, this work would need to fall under one of the Essential Businesses and Operations exceptions of the Safer at Home Order. We have addressed this issue of whether home improvement projects are allowed under the Order, and it is a gray area. Under the Order, "housing construction" is an Essential Business and Operation." The full phrase states "housing construction, *except that optional or aesthetic construction should be avoided except as permitted as a Minimum Basic Operation*". It is very important to note that whenever the Order prohibits conduct, it expressly and clearly states so. It will say individuals "are ordered to stay at home" or gatherings "are prohibited" or all entities "shall meet Social Distancing Requirements". In contrast, "should be avoided" is ambiguous. Literally, it does not say that optional or aesthetic construction "is prohibited" except as permitted as a Minimum Basic Operation.

The best practical answer we can give is that a contractor needs to use common sense. Each municipality is going to interpret the Order when enforcing it. Accordingly, any contractor needs to be cognizant of the fact that different municipalities may interpret and enforce the Order differently. We do not see the phrase "*except that optional or aesthetic construction should be avoided except as Permitted as a Minimum Basic Operation*" as prohibiting remodeling or home improvement. If the Order intended to prohibit it, the Order would have specifically said so. Instead, our best guess is that this portion of the Order is asking that housing construction businesses use common sense to avoid optional or aesthetic construction. Since it is not prohibited, then in some circumstances it is allowed. Common sense would dictate that if a home improvement project like outdoor work on a garage or outbuilding can be done safely (i.e., meeting all the social distancing requirements, etc.), then it may not be prohibited.

We need to stress, this language is not clear. The default under the Safer at Home Order is that optional or aesthetic housing construction should not be done. By doing home improvement projects with more than one person on site, you bring yourself into a gray area that could lead to an encounter with law

enforcement. To date, we have seen municipalities and law enforcement interact reasonably with contractors as to the interpretation and enforcement of the Order. If you are told to stop work because the municipal planner or law enforcement officer interprets the Order more narrowly to prohibit your work, you should cooperate and follow their orders. If you wish to challenge an interpretation, that should be done by reaching out to the policy makers at the municipality and at law enforcement to have a discussion as to Order and its interpretation.

Q16: May a contractor put siding on a new house with more than one employee?

A: If the siding is being installed on new home construction, we believe it is allowed. As set forth in previous posts, the order clearly includes housing construction as Essential Infrastructure. Further the Order makes clear that “Essential Infrastructure” shall be construed broadly to avoid any impacts to essential infrastructure. The only limitation we see in the order is where it states: “housing construction, except that optional or aesthetic construction should be avoided except as permitted as a Minimum Basic Operation”. Since the order specifically says that Essential Businesses and Operations are encouraged to remain open, and that Essential Infrastructure should be read broadly – it is our position that the home construction industry is to stay open. To stay open would mean there needs to be new construction. We read the optional or aesthetic construction narrowly to mean optional and aesthetic construction to be something less significant on an existing house that can easily be done later. If we read the term “optional or aesthetic construction” broadly to say it prohibits new construction, then housing construction would be essentially shut down.

It is our position that since the intent of the Governor’s Order was to keep “housing construction” as an Essential Business – saying no new construction would defy that intent. If the governor intended to have no new home construction, he would have just written it that way. The municipalities appear to concur with this interpretation. We have had no reports of municipalities turning down permits for new home construction or law enforcement shutting down work sites over different components of work at a new home site.

Q17: May a building material supplier’s delivery driver be onsite for a delivery if the contractor is onsite?

A: Yes. Hardware stores and businesses that sell electrical, plumbing, heating, and construction materials are an Essential Business and Operation. They may have one or more employees as necessary to do the task so long as they comply with all of the social distancing requirements under the Order. The answer does not change even if the materials being dropped off are to a contractor that is performing work under the Minimum Basic Operation exception for optional or aesthetic construction with one person on site. The limitation for one person on site applies to the contractor doing the work, and not to an Essential Business and Operation that is acting within the scope of its essential business.

Q18: Can a landlord show an apartment?

A: Landlord’s under the order are specifically barred from entering leased apartments except for emergency maintenance. Under the real estate services, they may be able to show vacant apartments subject to all the limitations on real estate services.

Q19: Under the new Emergency Order #28, can my window treatment business begin to operate?

A: It does not appear that a residential, indoor window treatment business may begin operations except in narrow circumstances. First, the new provision of Emergency Order #28 creates an exception under Minimum Basic Operations that allows for exterior aesthetic or optional work to be done by one person. Accordingly, a window treatment business could operate its portion of the business that does exterior work by one person; however, this provision does not allow the window treatment business to do interior work.

Second, there is the issue of when can aesthetic or optional work be done under the Housing Construction of the Emergency Order #28 if it is not a Minimum Basic Operation. “Housing construction” is part of the Essential Infrastructure definition, which means that housing construction businesses are Essential Businesses and Operations that may continue to operate. However, this phrase

in the Order is further limited to say that “except that optional or aesthetic construction should be avoided except as permitted as Minimum Basic Operation.”

As stated above, interior window treatments would not be allowed under the Minimum Basic Operation exception because this exception applies to exterior work. However, the analysis does not stop at that point. Since it cannot be done as a Minimum Basic Operation, we are left with determining whether the limitation that such work “should be avoided” prohibits aesthetic or optional work. The easy answer is “should be avoided” is not a blanket prohibition. Accordingly, the municipalities that have been generally in charge of enforcement are left to figure out how to enforce this provision.

We believe that the “should be avoided” language requires a common sense application. For example, we believe since new home construction is an essential business, a builder is not required to leave a new, vacant home unfinished. In this circumstance, we believe the housing construction provision would allow the window treatments to be installed to complete the unfinished home. However, we also believe the state of Wisconsin would say that simply selling window treatments to an existing home should not be done.

We need to stress that these are grey areas that do not have a definitive answer. Each municipality will apply its interpretation when enforcing the Order, and a law enforcement official's determination should be followed when a contractor is confronted. If you are confronted by law enforcement, you should follow its directions as to your work (i.e., if you are told to stop working, you should stop working). The legality of whether you can work should be addressed not at a jobsite, but directly to the policy makers at the municipality (the elected officials, the leadership of the police department, the district attorney and city attorney offices, etc.).

HUMAN RESOURCES

Q20. Will I be required to carry documentation to leave my home?

A. No. Individuals do not need special permission to leave their homes, but they must comply with this order as to when it is permissible to leave home. Similarly, if a business is an essential business or operation as outlined in this order, it does not need documentation or certification to continue work that is done in compliance with this order.

Q21. How do I respond to law enforcement that may not know that my company is allowed to operate as an Essential Business and Operation under the Safer At Home Order?

A. Law enforcement has generally taken the position that they want to work with the public as to enforcement. For example, the Dane County Chiefs of Police Association released a letter stating that: “[i]t will not be our practice under this order to randomly stop people who are traveling to and from their residence or who are out and about in their communities within the exempted parameters. However, if we receive information about large outdoor gatherings or become aware of someone or a group of individuals blatantly ignoring the order, we will take appropriate action to encourage compliance.” [Read More Here](#).

Q22. An employee has reported that he has a fever, can he come to work?

A. No. The employee should stay at home. In order to be a business currently open under the Safer at Home Order, it must be an Essential Business and Operation. Under the Order, all Essential Businesses and Operations must comply with DHS guidelines located: <https://www.dhs.wisconsin.gov/covid-19/employers.htm>. The website provides a list of guidance for businesses on employee issues.

Under the DHS guidelines, it explains that Essential Businesses and Operations need to actively encourage employees with any acute respiratory illness to stay home. Specifically, the DHS guidance states:

- Ensure that employees who have symptoms of respiratory illness stay home and do not come to work until they are free of fever (>100.4°F) AND respiratory symptoms (for example, cough, shortness of breath) for at least three days (72 hours) without the use of fever-reducing medicine AND seven days have passed since symptoms first appeared. Employees should notify their supervisor and stay home if they are sick.

- Talk with companies that provide your business with contract or temporary employees about the importance of sick employees staying home and encourage them to develop non-punitive leave policies.
- Do not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work.

All businesses that are currently open as an Essential Business and Operation should review the DHS requirements as they are a condition of operating.

Q23. Numerous questions were asked relating to employees and leave:

A. Employment law is very complicated, and the WBA strongly advises you to contact an employment attorney. Most of the questions that have been received address whether an employer must pay an employee sick leaves that stays at home related to the COVID-19 virus.

The U.S. Department of Labor has provided guidance that may be helpful to you at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave> relating to the Families First Coronavirus Response Act: Employer Paid Leave Requirements. The Act applies to private employers with fewer than 500 employees.

Some of the highlights of that guidance include (Please read the entire guidance document and not just the highlights below):

- Covered employers must provide two weeks (up to 80 hours) of paid sick leave at the employer's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Covered employers must provide two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.
- Covered employers must provide to employees that it has employed for at least 30 days up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

The U. S. Department of Labor has numerous fact sheets, Questions and Answers, and Posters at: <https://www.dol.gov/agencies/whd/pandemic>. Again, please consult with an attorney or human resources professional.

Q24. Does an employer have to pay an employee who refuses to work due to fear of COVID-19?

A. No. There is no legal requirement that an employer pay an employee who refuses to come into work solely because of a fear of contracting COVID-19. The employer can consider the employee to have self-terminated. An employer can also consider it an excused absence and allow the employee to apply any accrued and unused paid time off and/or as a leave of absence without pay.

Q25. Is an employee who refuses to work solely due to fear of contracting COVID-19 entitled to sick pay under the Families First Coronavirus Response Act?

A. No. The FFCRA provides coverage only for employees who meet the following criteria:

- is subject to a governmental quarantine or isolation order,

- has been advised by a health-care provider to self-quarantine,
- is caring for an individual who is subject to governmental or self-quarantine,
- is caring for the employee's child because the child's school or child-care provider is closed, or
- is experiencing a substantially similar circumstance related to COVID-19 as specified by the Department of Health and Human Services, in consultation with the Department of Labor.

Q26. Is Governor Evers' "Safer at Home Order" an order to isolate giving rise to coverage under the Families First Coronavirus Response Act?

A. No. The Safer at Home Order is not an order for an individual to quarantine or isolate. An order to quarantine or isolate giving rise to coverage under the FFCRA, is an order to a specific individual issued by authorities based upon that individual having been diagnosed with COVID-19, or exposed to a person who has been diagnosed with COVID-19 or who has been advised by a health-care provider to self-quarantine.

Q27. Must Employers implement measures to reduce the potential to exposure to COVID-19 in the workplace?

A. Yes. OSHA has published detailed guidance about steps employers need to take to reduce the threat of exposure to COVID-19 in the workplace.

Q28. Can an employer request an employee who is requesting leave pursuant to the FFCRA for confirmation of their illness or other basis for leave?

A. Yes. The employer has a right to request that the employee provide confirmation of the claimed illness from a health-care provider or other appropriate source.

Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

When taking any action permitted under the Order, all individuals, organizations, government bodies, and any other permitted group of individuals shall, to the extent possible, follow DHS guidelines located here: www.dhs.wisconsin.gov/covid-19/index.htm.

All Essential Businesses and Operations shall comply with DHS guidelines for businesses located here: www.dhs.wisconsin.gov/covid-19/employers.htm