

COVID-19: WASHINGTON STATE INSTITUTES STATEWIDE “STAY HOME – STAY HEALTHY” ORDER TO COMBAT COVID-19

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U.S. Labor, Employment and Workplace Safety Alert

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The State of Washington has ordered its residents to stay home until midnight on April 6, 2020, in a strong effort to stem the spread of COVID-19. On March 23, 2020, Governor Jay Inslee issued [Proclamation 20-25](#) titled "Stay Home – Stay Healthy" (the "Proclamation"). The Proclamation requires Washingtonians to stay home except for employment in essential business services and anyone engaging in an essential personal activity. The Proclamation allows for two types of essential employment. The first is essential employees performing work for an essential business as identified in the ["Essential Critical Infrastructure Workers"](#) list appended to the Proclamation. The second is any employee carrying out minimum basic operations for non-essential business. The Proclamation encourages all essential businesses to remain open and operating. The closure mandate clause for non-essential business went into effect at midnight on March 25, 2020. The Proclamation is enforceable under Washington law and individuals who violate the Proclamation may be subject to criminal charges. Permitted essential personal activities include personal health and welfare errands such as grocery shopping, visits to pharmacies, caring for friends and family members, and socially distanced outdoor exercise.

The Appendix designates Essential Critical Infrastructure Workers as those who help ensure continuity of functions critical to public health and safety, as well as economic and national security. The Appendix identifies thirteen industry sectors that contain Essential Critical Infrastructure Workers and describes employee functions within those sectors, including:

- Healthcare/Public Health;
- Emergency Services Sector, including Law Enforcement, Public Safety and First Responders, and Public Works;
- Food and Agriculture;
- Energy, including Electricity industry, Petroleum Industry, Natural and Propane Gas Industry;
- Water and Wastewater Industry;
- Transportation and Logistics Industry;
- Communications and Information Technology;
- Other Community-Based Government Operations and Essential Functions;

- Chemical Manufacturing Industry;
- Hazardous Material Industry;
- Financial Services Industry;
- Chemical Industry; and
- Defense Industrial Base Industry.

Additional guidance from the governor further clarified the restrictions on the construction industry.

The [Construction Guidance Memorandum](#) (the "Memorandum") issued on March 25, 2020, states "[i]n general, commercial and residential construction is not authorized under the proclamation because construction is not considered to be an essential activity." The Memorandum, however, states that construction is permitted in the following limited circumstances:

Construction related to essential activities as described in the order;

To further a public purpose related to a public entity or governmental function or facility, including but not limited to publicly financed low-income housing; or

To prevent spoliation and avoid damage or unsafe conditions, and address emergency repairs at both non-essential businesses and residential structures.

In addition to this memo, Governor Inslee issued further guidance regarding the real estate industry on March 27, 2020. The [Real Estate and Mortgage Memorandum](#) states "[w]hile real estate activities along with mortgage lending activities have been approved as essential activities under the Proclamation, such activities shall only be permitted under the following restrictions and limitations:

In-person meetings with customers are prohibited except when necessary for a customer to view a property or sign necessary documents;

No real estate open houses shall be permitted;

Property viewings, inspections, appraisals, and final walk-throughs shall be arranged by appointment and limited to no more than two people on site at any one time, exercising social distancing at all times; and

Except for the limited exceptions authorized above, all new real estate listings shall be facilitated remotely."

Businesses seeking confirmation on whether they qualify as an essential business or businesses seeking to petition the state to be considered an essential business may do so by emailing, business@mil.wa.gov.

Businesses operating as essential are not required to request or receive additional certification from the State to continue to operate. The State is encouraging only businesses requesting clarification or requesting that their business be added to the list of essential businesses to email inquiries. Responses to recent requests indicate that the State will not be able to provide individual responses at this time due to the volume of requests it has received. All essential businesses still operating under the Proclamation, including construction activity and real estate transactions, must meet social distancing and appropriate health and worker protection measures before proceeding.

The Proclamation requires all non-essential businesses to remain closed until midnight on April 6th, except to

perform basic minimum operations. Non-essential businesses include dine-in restaurants; bars and nightclubs; entertainment venues; gyms and fitness studios; and convention centers as previously designated by the governor, as well as all other businesses that do not fall into an essential business category. Basic minimum operations is defined as "the minimum activities necessary to maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions." All gatherings for social, spiritual, and recreational purposes, regardless of the number of people involved, are also prohibited.

While the Proclamation is currently in effect until April 6, 2020, the governor has already announced that an extension on the Proclamation is likely. The governor also announced on March 30, 2020, that the State will be taking additional measures to enforce the requirements of the Proclamation, including suspension of business licenses for those who do not comply.

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