

What Maryland's COVID-19 Nonessential Business Closure Order Means for Local Businesses

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By Robert R. Niccolini and Patrick T. Wilson

Conditions for doing business in Maryland are rapidly changing due to the spread of the novel Coronavirus (and the illness it causes, COVID-19). On March 23, 2020, Governor Larry Hogan issued Order Number 20-03-23-01 mandating the closure of all nonessential businesses effective at 5:00 p.m. on Monday, March 23, 2020. While not going as far a shelter-in-place order, the order banned social gatherings larger than 10 people and Marylanders were urged to avoid going out as much as possible.



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Many business sectors have been designated as critical infrastructure sectors and the order *does not* require them to close. Those businesses were outlined in [Interpretive Guidance COVID19-04](#) from the Office of Legal Counsel, and were released by the governor to help explain which businesses would be exempt from the order. Maryland followed and expanded on [federal guidelines](#) to determine what businesses were considered “critical infrastructure” and would be exempted from the order.

Which Businesses Are Ordered to Close?

The governor’s order states that the following businesses must close:

- Senior citizen activity centers
- Restaurants and bars are closed to the general public (with exceptions for delivery and take-away only service)
- Fitness centers, gyms, health clubs, pools, and self-defense or martial arts schools)
- Theatres and malls
 - Inclusive of food courts and retail establishments only accessible from the enclosed pedestrian concourses in the mall or other interior areas
 - Does not affect retail establishments directly accessible from outside a mall
- Cosmetic (tattoo parlors, tanning salons, barber shops, beauty shops)
- Other recreational establishments, including bingo halls, bowling alleys, pool halls, amusement parks, roller and ice skating rinks, golf courses (public and private), miniature golf establishments and driving ranges, and social and fraternal clubs

Which businesses are designated “critical infrastructure”?

The governor’s order provides that the following nonexhaustive list of businesses, organizations, and facilities are included in the federal critical infrastructure sectors, and may remain open:

- Chemical (including manufacturers and distributors)
- Commercial facilities (including lodging, property maintenance, supply companies, laundromats and dry-cleaners, commercial and residential construction companies, and self-storage facilities)
- Defense (companies that research, develop, manufacture defense or weapons systems and assets, as well as contractors supporting the defense and intelligence agencies)
- Food and agriculture (grocery stores, farmer’s markets, convenience stores, alcoholic beverage stores and distributors, distilleries and wineries, food supply companies, farms, food manufacturing and processing, pet supply stores, veterinary services, agricultural equipment manufacturers and suppliers, paper product manufacturers and suppliers)

- Communications (broadcast companies, cable TV, cellular and landline telephone, and internet service providers)
- Manufacturing (metal, heavy industry, medical equipment, personal protective equipment, cleaning and sanitation equipment and supplies)
- Energy (electricity production, gas stations, truck stops, utility maintenance services)
- Emergency services (hospitals, private healthcare provider offices, rehabilitation facilities, health plan, senior living facilities, manufacturers and distributors of medical equipment and supplies, home healthcare companies, and pharmacies)
- Financial services (banks, credit unions, nonbank lenders, payroll and payment processing companies, insurance companies, securities and investment companies, accounting companies, and armored car companies)
- Businesses and entities that support the judicial system, including law firms, bail bondsmen, and court reporters
- Information technology (companies that design, develop, distribute, host, sell, and support information technology software and hardware, as well as those providing network routing and access)
- Transportation systems (airlines, railroads, motor and freight carriers, among others)
- Water and wastewater systems (municipal, community, and other drinking and wastewater systems, well drillers, companies providing maintenance and inspection services for water and wastewater assets, and water testing companies)
- Supporting firms (firms providing staffing or payroll services or essential raw materials, products, or services to any other business, organization, or facility considered a federal critical infrastructure sector)

Are employees of businesses designated critical infrastructure permitted to work at the business location?

Yes. It appears that based on Interpretive Guidance COVID19-04, employees who are employed at businesses determined to be critical infrastructure may work either onsite or remotely.

Are businesses deemed “nonessential” that choose to remain open despite the order liable to a legal punishment?

Yes. The order includes criminal punishment for its violation. It states that a person who knowingly and willingly violates the order could be subject to imprisonment of up to 1 year or a fine of up to \$5,000 or both.

The order states that businesses that have questions regarding whether their business is determined as critical infrastructure may ask the Maryland Emergency Management Agency for a determination by emailing psector@maryland.gov.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm’s [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Critical information for employers is also available via the firm’s [webinar programs](#).

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