

As you are likely aware, the Manitoba government has temporarily ordered the closure of “non-essential” Manitoba businesses, in light of COVID-19. Not all businesses must close, however, and even if your business is required to close, there are exceptions that allow limited operations for certain purposes. Those businesses that are deemed to be “essential” businesses, meanwhile, also have rules they must follow, in order to operate.

Do you have questions about these new rules and restrictions, and how they might affect your business? We’ve put this guide together, to help you understand how the operations of a business that operates in Manitoba might be affected.

First, let’s look at the legal framework for these rules. Section 67 of *The Public Health Act* (the “Act”) provides Manitoba’s Chief Public Health Officer the ability to make Orders for special measures, in a public health emergency. On Monday, March 30, 2020, six (6) Orders were issued under the Act in response to the COVID-19 pandemic (collectively, the “Order”), replacing all previous Orders given under the Act. On April 30, 2020, a new Order was issued stating that the special measures relating to the closure of non-essential business would remain in effect until May 4, 2020.

The Order restricts the operations of non-essential business. A business listed in the Schedule to the Order (the “Schedule”) is considered essential and can continue to operate while complying with additional requirements. A business that is not listed in the Schedule is considered non-essential and must close effective April 1 - May 4, 2020, with exceptions. Link to Order issued April 16, 2020 is available here https://www.pitblado.com/sites/default/files/bridge_order_-_orders_soe_bridge_04302020.pdf. The Schedule is available here https://www.pitblado.com/sites/default/files/pitblado_law_covid19_business_closures_march_30_2020_order_under_the_public_health_act_0.pdf.

The Manitoba government has indicated the Order may be extended or otherwise modified, in the future.

1. Is your business considered an essential business or non-essential business?

To determine if your business is essential (and able to remain open) or non-essential (and must close from April 1 - May 4, 2020), you should review the Schedule to see if your business is listed as an essential business.

For example, if your business operates a pet store which supplies pet food and pet supplies, your business is considered an essential business, pursuant to Section 4 of the Schedule:

Retail and Wholesale

4. A business that provides essential goods and services for the health and well-being of animals, including animal feed, pet food, and animal supplies such as bedding.

If your business operates a retail store which sells clothing, your business is not included on the Schedule and therefore is considered a non-essential business. However, if your business operates a retail store which sells protective clothing for use in the workplace, your business is considered an essential business pursuant to Section 3 of the Schedule:

Retail and wholesale

3. A business that provides personal protective equipment or protective clothing for use in the workplace.

Once you have determined if your business is an essential or a non-essential business, you must ensure that your business complies with the requirements that are set out in the Order:

- If your business is an essential business, there are additional requirements in the Order that you must follow; or
- If your business is a non-essential business, you will need to comply with the Order's closure obligations. There are, however, exceptions to the closure requirements that are outlined in the Order, which may allow you to continue to operate in a more limited capacity.

More information about the obligations that apply to both types of businesses follows below.

2. Essential Business Additional Requirements

If your business is an essential business and is able to remain open, you must ensure that your business is compliant with the additional requirements that are outlined in the Order. The additional requirements require you, as operator of the essential business, to put in place measures to ensure that appropriate physical distancing rules are followed.

Section 4 of the Order states that an essential business may remain open, however:

if the business allows members of the public to attend at the place of business, the operator of the business must implement measures to ensure that persons attending the place of business are reasonably able to maintain a separation of at least two metres from other persons who are attending the business.

Examples of implementation of the additional requirements in the Order can include limiting the number of people in a place of business, relocating staff in a place of business, and/or visible space barriers (such as markings on the floor or plastic dividers) in a place of business.

3. Non-Essential Businesses Exceptions

If your business is a non-essential business, it must close from April 1 - May 4, 2020 (this date may be reviewed and extended, in the future). However, there are exceptions to this closure requirement. The two (2) exceptions outlined in the Order include the ability for non-essential businesses to operate remotely, and temporary access to a closed non-essential business.

OPERATING REMOTELY

Sections 3(3) and 3(4) of the Order state that non-essential businesses are not prevented from operating in ways that do not bring customers onto the business's premises or property to make or pick up orders or purchases. This means that a non-essential business may continue to operate:

- to accept deliveries of goods and other supplies; or
- if customers order or purchase goods online or over the phone, rather than making in-store orders or purchases. In this case, the customer could arrange for pick-up of the purchased goods (at the business), curbside pick-up of purchased goods (off the business's property), or they could be delivered by the business to the customer
 - if customers attend the business to pick up the purchased goods, steps must be taken by the operator of the business to ensure physical distancing of two metres between customers.

Staff may still work in-store, as long as steps are taken to ensure physical distancing of two metres. This will allow the business to receive and fulfill orders it receives online or over the phone. Examples could include a restaurant that offers food for delivery or takeout, or a business that has employees preparing goods for sale and delivery, in a warehouse. In all cases, the key is that customers are not coming on-premises to make purchases or orders, and that everyone on the premises observe physical distancing.

TEMPORARY ACCESS

A closed non-essential business can be accessed temporarily. Section 3(2) of the Order states that temporary access to a closed non-essential business is authorized (unless otherwise prohibited by an applicable law) for the following purposes:

- performing work at the place of business in order to comply with any applicable law;
- allowing for inspections, maintenance and repairs to be carried out at the place of business;
- allowing for security services to be provided at the place of business; or
- attending that the place of business on a temporary basis to deal with critical matters relating to the closure of the place of business if those matters cannot be addressed remotely.

Examples of situations where temporary access to a closed non-essential business is allowed could include where someone is physically present at the business to perform repairs, provide security services, and/or deal with matters relating to the close of the business that cannot be done remotely.

4. Legal Information and Considerations for Your Business

This is general information only, rather than legal advice. To determine if your business is an essential or a non-essential business, and what additional requirements or exceptions apply to the operation of your business, the specific circumstances surrounding your business will need to be considered.

You should continuously monitor all federal and provincial announcements as well as the implementation of respective orders, as the law surrounding the COVID-19 pandemic is evolving on a daily basis. Based on the measures taken in other jurisdictions, we anticipate there may be ongoing refinements to list of essential and non-essential businesses and their operational abilities.

We recommend that you seek assistance from legal counsel where appropriate. Please do not hesitate to contact us if you require assistance with:

- Determining if all or a portion of your business is considered an essential business;
- Deciding how your business should operate in these circumstances;
- Implementing processes and protocols to ensure compliance with the law.

Please do not hesitate to contact your relationship partner or lawyer if you have any questions or if we can be of assistance in guiding you through these new challenges.

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