

The Manitoba government has issued an order allowing the re-opening of Manitoba businesses, which follow the previous orders made to close “non-essential” business in light of COVID-19. Not all businesses can re-open, however, and even if your business is not allowed to re-open, there are exceptions that allow limited operations for certain purposes. Those businesses that are allowed to re-open, meanwhile, also have rules they must follow, in order to operate.

Do you have questions about the re-opening rules and restrictions? 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 May 29, 2020, twelve (12) Orders were issued under the Act relating to the re-opening of the economy, replacing all previous orders relating to the re-opening of the economy (collectively, the “Order”).

The Order outlines what businesses can continue to operate, and how businesses can continue to operate. A business listed in Schedule A (“**Schedule A**”) and Schedule B to the Order (“**Schedule B**”) can continue to operate while complying with additional requirements. A business listed in Schedule C to the Order (“**Schedule C**”, together with Schedule A and Schedule B, the “**Schedules**”) must close effective June 1 - July 1, 2020, with exceptions. A business not listed in the Schedules and whose ability to open is not otherwise specifically addressed in the Order may continue to operate with additional requirements. The Order and the Schedules are available [here](https://www.gov.mb.ca/covid19/soe.html) (https://www.gov.mb.ca/covid19/soe.html).

It is expected that this Order will be modified, in the future.

1. Is your business listed in the Schedules?

To determine if your business is able to remain open, re-open, or be closed from June 1 - July 1, 2020, you should review the Schedules to see if your business is listed in Schedule A, Schedule B, Schedule C, or not listed in the Schedules.

It is important that you identify what Schedule your business is listed in (if any), as each of the Schedules require implementation of different measures.

For example, if your business operates a pet store which supplies pet food and pet supplies, your business is listed in Schedule A, pursuant to Section 4 of Schedule A:

A business that sells essential goods 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 listed in Schedule B, pursuant to Section 7 of Schedule B:

A retail business not set out in Schedule A. For certainty, a shopping centre or mall may open, but occupancy in a food court in the shopping centre or mall must be restricted to 50% of the usual capacity.

However, if your business operates a retail store which sells protective clothing for use in the workplace, your business is listed in Schedule A, pursuant to Section 3 of Schedule A:

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

If your business operates an escape room, your business is listed in Schedule C, pursuant to Section 6 of Schedule C:

A business that operates an indoor recreational facility such as a trampoline park, laser tag facility, escape room, go-kart track, axe throwing centre, climbing facility, children's playground or batting cages.

If your business operates an office in which accounting services are provided, your business is not listed in the Schedules.

Once you have determined if your business is listed in Schedule A, Schedule B, Schedule C or is not listed in the Schedules, you must ensure that your business complies with the requirements that are set out in the Order. More information about the obligations that apply to businesses listed in the Schedules follows below.

a. Schedule A Requirements

If your business is listed in Schedule A 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 business listed in Schedule A, to put in place measures to ensure that appropriate physical distancing rules are followed.

Section 2(1) of the Order states that a business listed in Schedule A may open so long as the operator of the business:

implements measures to ensure that members of the public attending the business are reasonably able to maintain a separation of at least two metres from other members of the public at 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.

b. Schedule B Requirements

If your business is listed in Schedule B 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 business listed in Schedule B, to put in place measures to ensure that appropriate physical distancing rules are followed, and to limit the number of people on the business premises appropriately.

Section 2(2) of the Order states that a business listed in Schedule B may open so long as the operator of the business:

implements measures to ensure that members of the public attending the business are reasonably able to maintain a separation of at least two metres from other members of the public at the business; and

limits the number of members of the public at the business to 50% of the usual occupancy of the premises or one person per 10 square metres of the premises that are open to the public, whichever is lower.

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.

c. Schedule C Requirements

If your business is listed in Schedule C, it must close from June 1 - July 1, 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 Schedule C businesses to operate remotely, and temporary access to a Schedule C business.

Operating Remotely

Sections 2(4) of the Order state that Schedule C businesses:

may continue to provide goods or services online, by telephone or other remote means.

Schedule C businesses can continue to operate remotely by selling goods or services online or over the phone. The key is that customers are not coming on-premises to make purchases or orders.

Temporary Access

A closed Schedule C business can be accessed temporarily. Section 2(3) of the Order states that temporary access to a closed Schedule C 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.

Examples of situations where temporary access to a closed Schedule C 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.

2. Businesses not listed in the Schedules

If your business is listed not listed in the Schedules, and is not by reason of the Order precluded from opening, it can remain open. If your business is not listed in the Schedules 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 business not listed in the Schedules, to put in place measures to ensure that appropriate physical distancing rules are followed.

Section 2(5) of the Order states that a business not listed in the Schedules may open if their ability to open is not otherwise specifically addressed in the Orders. It also states that if members of the public are permitted to attend a business not listed in the Schedules, the operator must:

implement measures to ensure that members of the public attending the business or facility are reasonably able to maintain a separation of at least two metres from other members of the public.

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

c. Legal Information and Considerations for Your Business

This is general information only, rather than legal advice. To determine if your business is or is not included in the Schedules, 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.

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

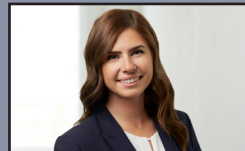
- Determining if all or a portion of your business is listed in Schedule A, Schedule B, or Schedule C;
- Deciding how your business should operate in these circumstances;
- Implementing processes and protocols to ensure compliance with the law.

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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This article represents general information and is not legal advice. Please contact us if you would like legal advice that is tailored to your particular circumstances. We would be happy to help.