

COVID-19 Legal Update

MARYLAND: Executive Order No. 20-03-23-01

Effective: March 23, 2020
Expires: After the termination of the state of emergency

On March 23, 2020, Governor Lawrence Hogan issued an Executive Order to limit certain activities within the State of Maryland to reduce the spread of COVID-19, to reduce the threat to human health by mitigating transmission of the novel coronavirus, and to protect the public health, welfare, and safety.

The Order is accessible [here](#) and the interpretive guidance from the Office of Legal Counsel is [here](#).

DURATION

The Order went into effect at 5:00 p.m. on March 23, 2020. This Order will remain in effect until after the termination of the state of emergency and the proclamation of the health emergency has been rescinded, or until this Order is rescinded, superseded, amended, or revised by additional orders.

GENERAL REQUIREMENTS

Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events of more than 10 people are prohibited at all locations and venues.

Maryland State Superintendent Karen Salmon announced that public schools will stay closed through April 24th, leaving open the possibility that students might still return if the health emergency abates. While not mentioned in the Order, Governor Hogan stated that daycares could remain open.

All businesses that remain open must implement social distancing and follow the Occupational Health and Safety Act (“OSHA”) Guidance and Center for Disease Control (“CDC”) COVID-19 Recommendations related to sanitation and employee safety.

- Social distancing is defined by the CDC to mean avoiding events where groups of people interact in close proximity (“congregate settings”), avoiding mass gatherings, and maintaining distances of approximately six feet from others when possible.

GENERAL APPLICATION OF ORDER TO BUSINESSES

The Order controls [business establishments that are not part of the critical infrastructure sectors](#) identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency.

- Specifically closed are:
 - Senior centers;
 - Restaurants and bars
 - Exception: food/beverage services in health care facilities;
 - Exception: carry-out and delivery;
 - Fitness centers;
 - Theaters;
 - Enclosed malls;
 - Exception: retail establishments that are directly accessible from the outside;
 - Exception: local governments may approve access if the mall has a grocery store/pharmacy or has a health care facility;
 - Recreational establishments (bingo halls, bowling alleys, amusement parks, golf courses, and any other establishment subject to admission and amusement tax under Title 4 for the Tax Code of Maryland);
 - Salons, tattoo parlors, and any other service described in Title 5, Subtitle 2 of the Business Occupations Article of the Maryland Code.
- Specific exclusions to the Order are
 - Any federal, state, or local government office;
 - Media services;
 - Nonprofits providing essential services to low income persons.

According to the Interpretive Guidance from the Maryland Office of Legal Counsel, the following food and agricultural businesses can remain open:

- grocery stores
- farmer's markets
- convenience stores
- alcoholic beverage stores/distributors
- farms
- pet supply stores
- vet hospitals

Several other businesses in the chemical, lodging, communications, manufacturing, defense, emergency, energy, financial, government, healthcare/public health, IT, transportation systems, and water/waste management sectors can also remain open.

Lastly, because door-to-door solicitation violates social-distancing guidelines, such practices must be discontinued.

THIS IS NOT A SHELTER-IN-PLACE ORDER

The Order is not a shelter-in-place order. However, the Interpretive Guidance urges residents to remain home, and employers are urged to promote work-from-home arrangements to the greatest extent possible.

ENFORCEMENT

Penalties for breaking the Order include up to a year in prison and a \$5,000 fine.

TAXES

New filing deadlines have been issued by the Comptroller of Maryland. On June 1, 2020, business-related tax returns and payments that were not collected in March, April, and May are due. On July 15, 2020, individual income state returns and payments are due. If the taxpayer filed for a federal extension, individual income tax state returns are due on October 15, 2020.

PROCESS FOR REQUESTING A WAIVER

The Order does not specifically address waivers. However, our firm can advise on how/whether to petition the Governor's office and/or to file an emergency injunction in state court if you believe the Order inappropriately restricts your operations.

BUSINESS LIABILITY DURING A PANDEMIC

- Any business that remains open must adhere to the recommendations issued by OSHA, CDC, and local health departments regarding sanitation, social distancing, and isolation of persons exhibiting flu-like symptoms. Failing to adhere to these baseline recommendations exposes a business to claims from patrons or employees who contract COVID-19 that the business failed to take reasonable precautions to keep them safe.
- As of the date of this Alert, there is no statement from Maryland's Worker's Compensation Commission that employees who contract COVID-19 in the workplace cannot file claims for workers' compensation benefits. Therefore, strict adherence to the recommended best practices for sanitation, social distancing, and isolation will minimize the likelihood of, and provide the best defense to, such a claim.
- Businesses should contact their liability and workers' compensation insurance carriers to ensure that operating during a pandemic does not violate provisions of their policies.

MARYLAND BUSINESS/NONPROFIT COVID-19 ASSISTANCE PROGRAMS

The Maryland Department of Commerce is offering three new business assistance programs in response to the COVID-19 pandemic:

1. **Small Business Emergency Relief Grant Fund** - Maryland businesses and nonprofits impacted by the COVID-19 (with 50 or fewer employees) may apply for emergency funds through the Department of Commerce. They can apply for grants up to \$10,000, not to exceed 3 months of cash operating expenses. The following terms and conditions apply:
 - The business must be established prior to March 9, 2020.
 - The business must be in good standing.

- Applicants must have employees on their payroll for whom they have had payroll taxes withheld (i.e. W-2 employees).
- Annual Revenues of the business or nonprofit not to exceed \$5 million as evidenced by Financial Statement or other financial documentation.
- The business or nonprofit must demonstrate financial stress or disrupted operations, which may include but are not limited to:
 - Notices from tenants closing operations and not paying rent caused by loss of income.
 - Notice of inability to make loan payments due to reduced sales, suspended operations.
 - Increased cost related to COVID-19 prevention measures.
 - Notice of disrupted supply network leading to shortage of critical inventory or materials.
 - Other circumstances subject to review on a case-by-case basis.

The business or nonprofit is expected to seek longer term funding through its bank, SBA, or other source.

The small business or nonprofit may use the funds as working capital to support payroll expenses, rent, mortgage payments, utility expenses, or other similar expenses that occur in the ordinary course of operations.

Businesses can [apply here](#).

2. **Small Business Emergency Relief Loan Fund** - This loan fund offers no interest or principal payments due for the first 12 months, then converts to a 36-month term loan of principal and interest payments, with an interest rate at 2% per annum.

Loans of up to \$50,000 (not to exceed three months of cash operating expenses) are available to Maryland businesses impacted by the COVID-19 with fewer than 50 employees.

Deferral of any payments for the first 12 months, and straight amortization beginning in the 13th month through the 36th month. There are no collateral requirements.

To qualify for the loan:

- Business must be established prior to March 9, 2020 and in good standing.
- Applicants must have employees on their payroll for whom they have had payroll taxes withheld (i.e. W-2 employees).
- Businesses must provide two years of historical financial statements and most recent interim statement to benchmark revenue against (if available).
- Businesses must provide six month pro forma of estimated lost revenue or other documented loss evidence.
- Businesses must have a minimum personal credit score of 575.
- Businesses must demonstrate financial stress or disrupted operations, which may include but are not limited to:
 - Notices from tenants closing operations and not paying rent caused by loss of income.
 - Notice of inability to pay rent or make loan payments due to reduced sales, suspended operations.
 - Increased cost related to COVID-19 prevention measures.
 - Notice of disrupted supply network leading to shortage of critical inventory or materials.
 - Other circumstances subject to review on a case-by-case basis.

The business may use the funds as working capital to support payroll expenses, rent, mortgage payments, utility expenses, or other similar expenses that occur in the ordinary course of operations.

Businesses can [apply here](#).

3. **Emergency Relief Manufacturing Fund** - This \$5 million incentive program helps Maryland manufacturers to produce personal protective equipment (PPE) that is urgently needed by hospitals and health-care workers across the country. More information coming by Friday, March 27, 2020.