

Minnesota Executive Order: Some Business May Reopen with ‘Non-Critical Exempt’ Workers

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Minnesota State Governor Tim Walz has issued [Emergency Executive Order 20-40, Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces](#), relaxing his stay-at-home orders.

The Executive Order (EO) identifies a new category of workers as “Non-Critical Exempt” who may begin to return to work no earlier than April 26, 2020, at 11:59 p.m., provided the workplace complies with certain safety requirements.

The Minnesota Department of Employment and Economic Development has created a [new website](#) to provide businesses with guidance on the Non-Critical Exempt Business categories and on safely returning workers to the workplace.

Previous EOs

The EO the first step in a plan to gradually allow workers to return to work, as it is safe to do so, since restrictions went into place under previous executive orders: EO 20-20, Directing Minnesotans to Stay at Home; and EO 20-18, Continuing the Closure of Bars, Restaurants, and Other Places of Public Accommodation. The Governor extended both prior orders under Executive Order 20-33, until 11:59 p.m. on May 3, 2020. For more details on the original restrictions and the extension, see our articles, [Minnesota Stay At Home Order](#) and [May The Fourth Be With You: Minnesota Stay-At-Home Order Extended to May 4](#).

EO 20-40

The new EO defines the following businesses as Non-Critical Exempt:

- **Industrial and manufacturing businesses:** Businesses in this category include industrial or manufacturing businesses, to the extent that such businesses’ employees were not exempt under the Critical Sector exemption. This category includes wholesale trade, warehousing, and places of employment in which goods are in the process of being created. This category does not include customer-facing retail environments associated with an industrial or manufacturing business in this category.
- **Office-based businesses:** Businesses in this category include office-based businesses where workers do their work within an office space, at their desk, and their work is primarily not customer facing, to the extent that such businesses’ employees were not exempt under the Critical Sector exemption. This category does not include customer-facing retail environments associated with office-based businesses in this category.

Similar to the exemption for Critical Sector workers, Non-Critical Exempt workers may travel to and from their residences to their workplace or throughout the performance of their job duties. *However, if any of the Non-Critical Exempt workers can work from home they must continue to do so.*

COVID-19 Preparedness Plan

For employees to return to work for a Non-Critical Exempt Business, the business must establish and implement a COVID-19 Preparedness Plan. The plan must contain provisions implementing OSHA Standards and the guidelines from the Minnesota Department of Health and the CDC in the workplace.

At a minimum, the plan must contain the following:

- **Require work from home whenever possible.** All plans must ensure that all workers who can work from home continue to do so.
- **Ensure that sick workers stay home.** All plans must establish policies and procedures, including health screenings, that prevent sick workers from entering the workplace.
- **Social distancing.** All plans must establish social distancing policies and procedures.
- **Employee hygiene and source control.** All plans must establish hygiene and source control policies for workers.

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- *Cleaning and disinfection protocols.* All plans must establish cleaning and disinfection protocols for areas within the workplace.

Businesses must provide each worker a written copy of the plan and post it in an easily accessible location.

Additionally, businesses must provide workers with training on the contents and procedures of the plan. Businesses must then keep documentation demonstrating compliance with the training requirements.

Jackson Lewis has a dedicated team tracking and responding to the developing issues facing employers as a result of COVID-19. Please contact a team member or the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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