



April 27, 2020

## Minnesota Executive Order 20-40

On April 23, 2020, Minnesota Governor Tim Walz issued Executive Order 20-40 which allows certain Non-Critical Businesses, or entities which do not involve direct interactions with customers, to resume operations provided they comply with the Minnesota Occupational Safety and Health Act (“MOSHA”) and guidelines related to COVID-19 issued by the Minnesota Department of Health and the Centers for Disease Control. This Client Alert provides an outline of the requirements of Executive Order 20-40.

### **When May Non-Critical Business Resume Operations?**

Employees of Non-Critical Business may return to work beginning on April 27, 2020, provided their employer is in compliance with the requirements of Executive Order 20-40.

### **What is a Non-Critical Business?**

Non-Critical Businesses are defined as those employers operating manufacturing, industrial, or office-based businesses.

- **Industrial Settings:** Places of employment where goods are in the process of being created. Examples provided by the Minnesota Department of Labor and Industry (“DLI”) include agriculture, forestry, fishing and hunting, mining, construction, utilities and manufacturing. Wholesale trade and warehousing also qualify as they are preparing those goods for sale to customers and consumers.
- **Office Settings:** Places of employment at which employees do most of their work in an office space and at a desk. Employees are generally not working directly with customers.

Customer facing operations remain closed unless previously designated as a Critical Business under a previous Executive Order. If the entity qualified as a Critical Business, it is not required to complete the requirements set forth in EO 20-40 but should continue to comply with and stay updated on OSHA requirements and guidelines issued by the Centers for Disease Control.

### **What actions are required by Executive Order 20-40?**

In order to resume operations under Executive Order 20-40, Non-Critical Businesses are required to:

1. Continue teleworking policies whenever possible. If employees are able to work remotely or telework, they should continue this practice.
2. Create a COVID-19 Preparedness Plan (“Plan”), provide the Plan in writing to all employees (by distributing it, posting it at work sites and distributing electronically), and train employees about the contents of the Plan.
  - A suggested template for a Plan is on [Minnesota Department of Labor’s website](#). Employers are encouraged, but not required, to use this template;
  - The Plan must (i) require that employees telework or work from home as much as possible; (ii) require social distancing; (iii) set forth hygiene and source control policies; (iv) set forth cleaning and disinfection protocols; and (v) require sick workers to stay home;

- Employers are encouraged to consider the arrangements the organization will need to ensure compliance with 6 feet distancing requirement and other CDC guidelines;
  - The Plan should be provided in writing to all employees and must be posted in all work places to allow for all workers to be able to review the plan (can also be circulated electronically);
  - Employers should document that training was provided to employees about the contents of their Plan;
  - Senior management must certify and sign the Plan.
3. Perform health screenings of employees as they enter into the worksite.
- Health screenings must include the following questions:
    - Do you have a new fever (100.4°F or higher), or a sense of having a fever?
    - Do you have a new cough that you cannot attribute to another health condition?
    - Do you have new shortness of breath that you cannot attribute to another health condition?
    - Do you have a new sore throat that you cannot attribute to another health condition?
    - Do you have a new muscle aches that you cannot attribute to another health condition, or that may have been caused by a specific activity (such as physical exercise)?

If an employee answers any of the screening questions affirmatively they should be asked to leave the workplace. Under newly relaxed guidelines issued by the Equal Employment Opportunity Commission (“EEOC”) asking an employee to leave if they admit to or exhibit symptoms of the flu or COVID-19 will not be considered an adverse action in response to a perceived disability.

Non-Critical Businesses are allowed, but not required, to take temperature screenings. Employers are also encouraged, but not required, to provide non-medical cloth masks and other appropriate protective gear for employees (gloves, shields or guards) where appropriate.

If you have questions about the implementation of the requirements of Executive Order 20-40, please contact an attorney listed below.

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