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Benefits**Employment Question of the Day: May 1, 2020****Legal Update**

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By Anne M. Radolinski and Jade B. Jorgenson

Question**How does Minnesota's Second Return to Work Order for Non-Critical Sectors (Executive Order 20-48) issued on April 30, 2020, affect my business?****Answer**

Yesterday, April 30, 2020, Governor Walz issued Executive Order 20-48 "Extending and Modifying Stay at Home Order, Continuing Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation, and Allowing Additional Workers in Certain Non-Critical Sectors to Return to Safe Workplaces."

Executive Order 20-48 incorporates and repeats a good portion of Governor Walz's previous order (Executive Order 20-40, issued on April 23, 2020, and effective Monday, April 27, 2020), which (i) allowed workers to return to industrial and manufacturing workplaces and office-based businesses where workers do not directly interact with customers; and (ii) set forth protocols and requirements required of the covered businesses who choose to return workers to industrial, manufacturing and office workplaces. Please see our Question of the Day from April 24 for an outline of Executive Order 20-40 and the requirements for covered businesses with workers returning to work.

Yesterday's order—Executive Order 20-48—in addition allows *retail businesses*, which sell, rent, maintain and/or repair goods, to engage in *curbside or outside pick-up or delivery*, as long as (i) customers do not enter the employer's business premises; (ii) the employer has created and implemented a COVID-19 Preparedness Plan that complies with Center for Disease Control (CDC), Minnesota Department of Health (MDH), and Occupational Safety and Health Administration (OSHA) regulations and includes health screenings; and (iii) certain other conditions are met. Please see our Question of the Day from April 24 for an outline of information on compliant Preparedness Plans.

Questions we have received from clients

What is considered a retail business for purposes of Executive Order 20-48?

Retail businesses are retail stores and businesses (to the extent the businesses' employees are not exempt Critical Sector workers), which either sell, rent, maintain or repair any goods, and only *to the extent that the goods can be picked up curbside or outside or delivered with limited customer contact and without customers entering the employer's place of business*. Retail businesses, including those offering services such as household goods rental, maintenance services, repair services and pet grooming, are allowed to reopen their businesses to the extent they can conduct their services pursuant to a CDC, MDH and OSHA compliant Preparedness Plan, follow the requirements of outside pickup and drop off, and other requirements outlined here on DEED's website.

Are businesses that provide direct customer contact services, such as salons allowed to reopen?

Salons, barbershops, tattoo parlors and other customer service establishments may only re-open to sell retail product for outdoor pick-up or delivery but are not allowed to provide any other services at this time. Sales of service chemicals not intended for retail are also not allowed. The businesses must in addition conduct the sales adhering to guidance provided by Department of Employment and Economic Development (DEED).

Is a Preparedness Plan required for the retail businesses?

Yes. Preparedness Plans must be in place before workers return to work. The Preparedness Plans must adequately set forth policies and procedures regarding:

1. requirements that workers who can work from home continue to do so;
2. ensuring that sick workers stay home and establishing policies and procedures, including health screening procedures, to prevent sick workers from entering the workplace;
3. social distancing requirements;
4. worker hygiene and source control; and
5. cleaning and disinfection protocols for the workplace.

DEED and the Minnesota Department of Labor and Industry have published helpful guidances regarding Preparedness Plans, a series of helpful FAQs regarding the various requirements related to return to work, and a template Preparedness Plan.

Can customers enter the retail establishments?

No. The order directs that the retail establishments may only fulfill orders via curbside, outdoor pickup or delivery for purchases made by customers online or by phone in advance of visiting the business. Retail businesses must not allow

customers to enter the business premises and are required to use online payment methods to the extent possible.

Are employers required to provide personal protective gear to workers?

DEED indicates that Executive Order 20-48 *requires* workers at retail establishments, who may have limited interaction with customers for purposes of curbside pickup or delivery, to wear a non-medical cloth mask. Employers must identify the protective gear that workers need and businesses will provide in their particular workplace.

While not required, employers are *strongly encouraged* under the order to provide protective gear and supplies, such as gloves, shields or guards.

If customer-facing retail businesses are unable to comply with some of the requirements, can they still reopen?

No. If employers are unable to comply with the requirements, they should not reopen. In fact, failure to abide by the requirements under Executive Order 20-48 may result in closure of the employer's business by Minnesota OSHA, as well as citations and penalties.

For more information about EO 20-48 or for assistance with your Preparedness Plan, please contact any member of Fredrikson & Byron's Employment & Labor team.

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