

ALERTS

Operating A Business Under North Carolina's COVID-19 "Stay-At-Home" Order: Essential Business Designation & Reentry Certification

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At 5:00 p.m. on Monday, March 30, 2020, all citizens and businesses of North Carolina will join hundreds of millions of others in the United States that are subject to state or local government issued "stay-at-home" orders. On March 27, 2020, North Carolina Governor Roy Cooper issued a statewide stay-at-home order via Executive Order 121, "Stay-At-Home Order and Strategic Directions for North Carolina in Response to Increasing COVID-19 Cases" (Stay-At-Home Order"). The Governor stated several findings as the basis for the Order, including that 763 COVID-19 cases across 60 counties had been confirmed in the state, widespread community transmission of the virus is occurring, and local control of the emergency has been insufficient to protect the lives and property of North Carolinians. Accordingly, residents statewide have been ordered to stay in their homes, except to engage in essential activities and governmental operations, and to access essential businesses and operations. All non-essential businesses are required to cease operations. The statewide order will work in conjunction with any local orders that have been issued by cities and counties in North Carolina, and it explicitly permits local jurisdictions to impose greater restrictions consistent with authority under North Carolina law if deemed necessary.

ESSENTIAL BUSINESS AND OPERATION DESIGNATION

For a period before the statewide order was issued (on the rapidly moving COVID-19 timetable, that's a matter of just days), North Carolina was proactively seeking business applications for essential designation and several industries reportedly made their case for inclusion in the list of businesses that could continue operations if such an order were issued. The Stay-At-Home Order ultimately listed thirty categories of "businesses, non-profit organizations, and educational institutions" that fall under the COVID-19 Essential Businesses and Operations designation, including but not limited to:

- - Financial services and insurance institutions
 - Manufacture, distribution and supply chain for critical products and industries (e.g., mining, transportation, construction, communications and technology)
 - Essential Infrastructure Operations (e.g., construction, airport operations, roads, highways, rail, public transportation, ports)

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- Transportation
- Gas stations and businesses needed for transportation
- Shipping and logistics services, and
- Professional services (e.g., legal, real estate, engineering, insurance).

The remaining categories of Essential Businesses and Operations range from businesses that meet social distancing requirements, stores that sell groceries and medicine, and businesses operating in federal critical infrastructure sectors to human services operations, media, and laundry services. For the comprehensive list, view the full order. All essential businesses and operations must comply with the social distancing requirements in the Stay-At-Home Order, to the extent practicable.

WHAT IF YOUR BUSINESS DOES NOT FALL WITHIN A DESIGNATED CATEGORY?

If your business does not fall within one of the thirty designated categories of COVID-19 Essential Businesses and Operations, you must reduce your activity to the minimum basic operations outlined in the Stay-At-Home Order. This includes "activities necessary to maintain the value of the business's inventory; preserve the condition of the business's physical plant and equipment; ensure security; process payroll and employee benefits, or related functions; and, activities to support employees who are working remotely."

However, you may continue fully operating your business provided that you have submitted a request online (preferred method) or via email (Essential.Exemption@ncdor.gov) to the North Carolina Department of Revenue ("NCDOR") seeking designation as an essential business or operation. The NCDOR's decision on your request will determine whether you may continue normal operations, within the other guidelines of the order.

IS DOCUMENTATION OR A POST DISASTER CERTIFICATE OF REENTRY NEEDED TO CONTINUE BUSINESS OPERATIONS?

According to the Stay-At-Home Order Frequently Asked Questions ("FAQs") and the North Carolina Department of Public Safety's *Guidance for Issuance of Certificates of Post Disaster Reentry* ("Reentry Guidance"), businesses and non-profit organizations will not need any documentation from the state to continue operations under the Stay-At-Home Order. Additionally, they indicate that no documentation is required for employees to continue working or to travel from home to the business. The FAQs state that "Businesses and not-for-profit organizations that are deemed essential as defined by the Order do not need any documentation from the State to continue operations. Employees are not required to have specific documentation to report to work under this Order."

The Reentry Guidance explains that the relevance of certificates of reentry issued by the Business Emergency Operations Center is limited: "Certificates are ONLY relevant when there are restrictions on movement, such as in the case of a curfew imposed by local officials after a major disaster such as hurricane or after an evacuation order has been lifted for emergency and other necessary personnel." The certificates are "ONLY

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needed in local jurisdictions that have imposed curfews or other specific restrictions on movement. Decisions about entry/re-entry are the authority of local governments." The guidance states that the certificates are not necessary or relevant to keeping a business open in the event of a *state or local* stay-at-home order:

Do I need a Re-entry Certificate to keep my business open during an emergency shut-down of businesses or Stay at Home Order? NO.

A Re-entry Certificate is not necessary or relevant to keeping a business open in the event of a "Stay at Home" Order by the state or a local government. In the event of a statewide or local Stay at Home order, businesses should consult the Order and any Guidance related to the Order, and determine whether they can continue operations. No documentation will be required to continue operating within the parameters of any statewide Order.

Do I need a Re-entry Certificate to travel to and from my place of business in the event of a Statewide Stay at Home Order? NO.

A Re-entry certificate is not relevant or necessary for movement between your home and place of business.

The Reentry Guidance stresses that decisions regarding a reentry certificate are within the purview of local authorities. Interestingly, the guidance does not explain in detail why a local government's restriction on movement via a local COVID-19 stay-at-home order is distinguishable from a restriction on movement by a locally imposed curfew or evacuation due to a hurricane. It also may be noteworthy that the language in the Reentry Guidance does not consistently reference both statewide and local stay-at-home orders. If no documentation requirement is imposed by the statewide Stay-At-Home Order, are we equally clear on the effect of the multiple local stay-at-home orders issued throughout state? The Reentry Guidance does go on to provide information about the procedure for obtaining a certificate, if one *still* thinks it is necessary:

How do I apply if I still think I need a Certificate?

Registered vendors who provide critical services, essential commerce and necessary goods for the health, safety and economic well-being of residents, can apply for a Certificate of Post Disaster Reentry by following the procedures outlined on the Reentry Registration page located at www.ReadyNC.org.

The Stay-At-Home Order is in effect for 30 days, until April 29, 2020, and a violation of the order is subject to prosecution as a misdemeanor offense. The circumstances presented by the COVID-19 pandemic are unprecedented. Moore & Van Allen is prepared to assist with questions regarding the operation of your business in this rapidly changing climate.