

Coronavirus, your business and complying with the Governor's new Executive Order

March 23, 2020

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On Monday, March 23rd, Governor Kate Brown issued an Executive Order (EO) immediately shutting down many Oregon businesses in an effort to slow the spread of Coronavirus. (To read the order, click [here](#)).

Governor Brown's Executive Order is unlike the EOs issued by every other Governor. In other states, Governors issued Executive Orders shutting down businesses, except those considered "essential". Their EOs included detailed lists of which businesses are deemed essential. Some referenced a Department of Homeland Security document issued March 19th. (To read the DHS advisory, click [here](#).)

Governor Brown flipped this concept on its head and issued an Executive Order specifically listing which businesses are not essential, shutting them down. Businesses not on her list are allowed to continue operating with some new rules. Governor Brown's Executive Order requires the following businesses to close immediately:

Closure of Certain Businesses

(Executive Order 20-12, Page Four)

2. ...Amusement parks; aquariums; arcades; art galleries (to the extent that they are open without appointment); barber shops and hair salons; bowling alleys; cosmetic stores; dance studios; esthetician practices; fraternal organization facilities; furniture stores; gyms and fitness studios (including climbing gyms); hookah bars; indoor and outdoor malls (i.e., all portions of a retail complex containing stores and restaurants in a single area); indoor party places (including jumping gyms and laser tag); jewelry shops and boutiques (unless they provide goods exclusively through pick-up or delivery services); medical spas; facial spas; day spas; and non-medical massage therapy services; museums; nail and tanning salons; non-tribal card rooms; skating rinks; senior activity centers; ski resorts; social and private clubs; tattoo/piercing parlors; tennis clubs; theaters; yoga studios; and youth clubs.

If your business is not on the Governor's list above, then good news -- you can stay open (for now). But there are new rules you must follow:

Required Social Distancing for Other Retail Businesses

(Executive Order 20-12, Page Five)

6. ...I prohibit the operation of any other retail business not subject to paragraph 2 of this Executive Order, unless the business designates an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority.

7. Retail businesses that fail to comply with paragraph 6 of this Executive Order will be closed until they demonstrate compliance.

So, if you are a retail business, which means you sell something -- including services -- and your employees interact with members of the public, you need to:

- (a) *Designate – in writing -- an employee or officer to establish, implement and enforce social distancing policies;*
- (b) *Establish, implement and enforce written social distancing policies for all employees and customers, indicating that everyone must maintain six feet of separation, including separating employees from one another;*
- (c) *Ensure all employees receive a copy of the written policies and acknowledge that they have received it, read it, and will comply with it. An initial or signature is preferable;*
- (d) *Make copies of the policies available to all customers;*
- (e) *Require your manager of social distancing policies to indicate, in writing, who is responsible for enforcing the social distancing policies during all hours that your business is open;*

This can be as simple as designating the manager on duty as the responsible person. Businesses need a paper trail showing a good faith effort to comply with establishing, implementing and enforcing social distancing policies;

- (f) *Your written social distancing policies should include explicit instructions to employees that they are not to use company time or vehicles to travel for any nonessential, non-work related purposes, to the maximum extent possible; and*
- (g) *Use this [link](#) to download specific advice for employers from the Oregon Health Authority on social distancing policies.*

WorkspaceRestrictions

(Executive Order 20-12, Page Five)

9. ...Facilitate telework and work-at-home by employees, to the maximum extent possible. Work in offices is prohibited whenever telework and work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.

10. When telework and work-from-home options are not available, businesses and non-profits must designate an employee or officer to establish, implement, and enforce social distancing policies, consistent with guidance from the Oregon Health Authority. Such policies also must address how the business or non-profit will maintain social distancing protocols for business-critical visitors.

11. Businesses and non-profits that fail to comply with paragraph 9 and 10 of this Executive Order will be closed until they demonstrate compliance.

So, if you plan to keep your business open, you need to:

- (a) Comply with everything listed above; and*
- (b) Create written protocols facilitating, to the maximum extent possible, which employees, if any, can telework or work-at-home. Document in writing specific reasons why employees (especially office employees) cannot telework or work-at-home. If nothing else, allow office employees to work from home for part of the day or part of the week, if at all possible.*

Everything about Coronavirus and Executive Order 20-12 is new. The paint just isn't dry, yet. That being said, I hope this information is helpful as you try to understand and comply with the new rules. If you have any questions, please let me know. I cannot guarantee a quick answer or an answer at all, but I will do my best. (I am volunteering at the Office of Emergency Management's Emergency Coordination Center in Salem representing the Red Cross.) You can reach me at fuller_darrell@yahoo.com, or my mobile number is 971-388-1786.

** Disclaimer: Darrell Fuller is not an attorney and this memorandum does not offer legal advice. Contact an attorney for legal advice. Darrell Fuller is a lobbyist with more than 30 years of experience at the Capitol in Salem, Oregon. But no one living in Oregon has experience in advising businesses on surviving a pandemic.*