Donna Richter

From: Andy Martone <andymartone@hessemartone.com>
Sent: Sunday, April 5, 2020 5:14 PM
To: Donna Richter
Cc: Matt Robinson
Subject: Missouri Stay at Home Order
Attachments: Stay at Home Missouri Order.pdf;
CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0
_Updated.pdf

Donna (and fellow SIBA members)—

At 5pm on Friday, April 3 the Director of the Missouri Department of Health and Senior Services issued what has commonly become known as a “Stay at Home” Order (“the Missouri Order”) covering the entire State of Missouri. The Order takes effect at first thing on Monday, April 6 and lasts until midnight on Friday, April 24.

With regards to the treatment of construction work and related services, the Missouri Order is somewhat vague. Clarification is being sought from the Governor’s office, but may not be quickly forthcoming.

The Missouri Order is only 2 3/4 pages long and incorporates the definitions of “individuals to perform essential worker functions” found in the guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency dated March 28, 2020 (the “CISA Guidelines”). The way that the Missouri Order is drafted is important, because while the CISA Guidelines are only an advisory list that contains guidelines that do not have the force of law, by incorporating their definition(s) of “essential worker functions” into the Missouri Order, the Missouri has given those definitions the force of law.

In addition (and more importantly), because the CISA Guidelines were originally designed to apply to infrastructure that is critical to CISA’s specific mission of maintaining homeland security and then subsequently expanded, their wholesale adoption has led to some ambiguity, and some confusion.

The Covid-19 pandemic is an international emergency. It is also a moving target, and the speed with which federal, state and local governments have found themselves forced to react has resulted in a series of laws, guidelines, state orders and local orders that are sometimes vague and inconsistent. As a best practice, employers will use both patience and common sense in applying them and be mindful that they (and their interpretations) will likely change as the situation evolves.

Question - Do the CISA Guidelines explicitly list all “essential workers”? 

Answer – No. The CISA Guidelines explicitly state to the contrary, explaining:

This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion. CISA Guidelines, page 1.

Officials should use their own judgment in issuing implementation directives and guidance. CISA Guidelines, page 2.
**Question** – What types of construction and related businesses are listed as “essential” in the CISA Guidelines?

**Answer** – The CISA Guidelines are fairly broad and list the following workers as being “typically essential”:

1. Individuals who repair and maintain critical infrastructure;
2. Individuals who are “working construction”;
3. Individuals who “support crucial supply chains and enable functions for critical infrastructure”.

**Question** – What types of projects are included in the definition of “critical infrastructure” under the CISA Guidelines?

**Answer** – Again, the CISA Guidelines are fairly broad, and include **but are not limited to**:

[M]edical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works. *CISA Guidelines, page 2.*

“Public Works and Infrastructure Support Services” also explicitly include:

[T]he operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues. *CISA Guidelines, page 10.*

The CISA Guidelines also acknowledge “Other Community- or Government-based Operations and Essential Functions” and identify workers as being essential who support:


**Question** – How do the Missouri Order and the CISA Guidelines change the St. Louis City and St. Louis County (and other local Missouri) Orders with regards to construction work?

**Answer** – As long as local orders do not conflict with the Missouri Order by being less restrictive, both would be in effect. If a local order is more restrictive (based on local – and not statewide – conditions), the stricter local order would also apply. Given the ambiguity created by the Missouri Order’s incorporation of the CISA Guidelines, there may be clarification needed as to which construction is “essential” under the Missouri Order. However, the CISA Guidelines’ inclusion of individuals “working construction” (*CISA Guidelines, page 1*) as being “essential” appears intended to encompass many forms of construction.

**Question** – How does the Missouri Order apply the CDC’s social distancing recommendations to construction?
Answer – The CDC’s recommendations should be followed whenever possible. However, the Missouri Order recognizes that this is not always possible and provides the “6-foot distancing” guideline does not apply to individuals performing essential worker functions whose job duties require contact with people closer than 6 feet. Missouri Order, page 2, paragraph 5.

Please let me know if you’d like to discuss.

Take care and stay safe!

Andy

PS—If you need me, my cell is 314.341.1354.

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April 3, 2020

The Director of the Department of Health and Senior Services, finding it necessary to protect public health and prevent the further spread of COVID-19, pursuant to the authority granted under section 192.020, RSMo, and 19 CSR 20-20.040, hereby order the following:

1. Individuals currently residing within the State of Missouri shall avoid leaving their homes or places of residence. When individuals need to leave their homes or places of residence to work, to access food, prescriptions, health care, and other necessities, or to engage in outdoor activity, they should at all times practice social distancing. Individuals may also go to and from an individual’s place of worship, provided that limitations on social gatherings and social distancing are properly adhered to.

2. Any entity that does not employ individuals to perform essential worker functions, as set forth in guidance provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) outlined at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical Infrastructure_Workforce_Version_2.0_Updated.pdf shall adhere to the limitations on social gatherings and social distancing set forth in sections 4 and 5 of this Order. Entities that do not employ individuals to perform essential worker functions may request a waiver from the limitation on social gatherings, as set forth in section 4 of this Order, from the Director of the Department of Economic Development, on a form prescribed by the Director. For offices and workplaces that remain open, individuals shall practice good hygiene and, where feasible, work from home in order to achieve optimum isolation from COVID-19.

3. Any entity that employs individuals to perform essential worker functions, as set forth in section 2 of this Order, and that is engaged in retail sales to the public, shall limit the number of individuals in any particular retail location as follows:

   (1) Twenty-five (25) percent or less of the entity’s authorized fire or building code occupancy, as set by local authorities, for a retail location with square footage of less than ten thousand square feet (10,000 ft²);

   (2) Ten (10) percent or less of the entity’s authorized fire or building code occupancy, as set by local authorities, for a retail location with square footage of ten thousand square feet (10,000 ft²) or more.

4. In accordance with the guidelines from the President and the Centers for Disease Control and Prevention (CDC), all individuals in the State of Missouri shall avoid social gatherings of more than ten (10) people. For purposes of this Order, “social gatherings” shall mean any planned or spontaneous event or convening that would bring together more than ten (10) people in a single space at the same time.
5. In accordance with the guidelines from the President and the CDC, every person and business in the State of Missouri shall abide by social distancing requirements, including maintaining six feet (6') of space between individuals. This provision shall not apply to family members or individuals performing essential worker functions, as set forth in section 2 of this Order, whose job duties require contact with other people closer than six feet (6'). This provision shall apply in all situations, including, but not limited to, when customers are standing in line or individuals are using shared indoor or outdoor spaces when outside their residence.

6. In accordance with the guidelines from the President and the CDC, schools shall close and remain closed. Notwithstanding section 2 of this Order, nothing in this Order shall prohibit daycares, child care providers, or schools from providing child care for working families in accordance with CDC guidelines found at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html. Further, this Order does not prohibit schools from providing Food and Nutritional Services for those children that qualify. School teachers and school staff may enter the building as long as they follow the directives set forth in this Order. Further guidance related to the conclusion of the 2019-2020 academic school year will be forthcoming from the Governor and the Department of Elementary and Secondary Education.

7. In accordance with the guidelines from the President and the CDC, every person in the State of Missouri shall avoid eating or drinking at restaurants, bars, or food courts; provided, however, that the use of drive-thru, pickup, or delivery options is allowed throughout the duration of this Order.

8. In accordance with the guidelines from the President and the CDC, people shall not visit nursing homes, long-term care facilities, retirement homes, or assisted living homes unless to provide critical assistance.

9. Pursuant to section 44.101, RSMo, this Order shall not be construed to prohibit or restrict the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during the declared state of emergency, subject to the provisions set forth herein.

10. All state office buildings are closed to the public; however, essential state functions shall continue. This provision shall not apply to the State Capitol Building during meetings or proceedings of the General Assembly.

This Order does not prohibit people from accessing essential services, such as grocery stores, gas stations, and banks, or engaging in outdoor recreation, provided that necessary precautions are taken and maintained to reduce the transmission of COVID-19, including observing social gathering and social distancing requirements set forth in sections 4 and 5 of this Order. The more that people reduce their public contact, the sooner COVID-19 will be contained and the sooner this Order will expire.

Pursuant to section 192.290, RSMo, this Order shall be observed throughout the state and enforced by all local and state health authorities; provided however, nothing herein shall limit the right of local authorities to make such further ordinances, rules, regulations, and orders not inconsistent with this Order which may be necessary for the particular locality under the jurisdiction of such local authorities.
Local public health authorities are hereby directed to carry out and enforce the provisions of this Order by any legal means.

This Order shall be in effect beginning 12:01 A.M., Monday, April 6, 2020, and shall remain in effect until 11:59 P.M., Friday, April 24, 2020, unless extended by further order of the Director of the Department of Health and Senior Services with said extensions not to exceed the duration of the effective period of Executive Order 20-02.

[Signature]

Randall W. Williams, MD, FACOG
Director