

PUBLICATION

Coronavirus: 5 Lessons Learned from Tennessee Governor's Executive Orders to Stay at Home

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Governor Bill Lee announced the implementation beginning April 1 and continuing through April 14 of two executive orders closing certain nonessential businesses and urging his citizens to stay at home. But the Governor made clear this order is no mandate to shelter in place. Unlike his counterparts in Virginia and North Carolina, Governor Lee's order is one of encouragement, not requirement.

The Orders

On March 30, 2020, Governor Lee issued Executive Orders [No. 21](#) and [No. 22](#) to urge Tennesseans to stay home except when engaging in an "Essential Activity" (such as caring for those in need or obtaining food or medicine) or "Essential Services" (including individuals whose job functions are deemed essential).

Both "Essential Activity" and "Essential Services" are broadly defined in Order 22 and should be closely reviewed to determine (i) what personal conduct is permitted and (ii) which businesses and organizations may continue to operate. Persons engaged in these activities are strongly encouraged to limit such activities as much as possible. When engaged in such permitted activities, all persons must comply with the "Health Guidelines" (President Trump's and the CDC's guidance on Coronavirus) to the greatest extent possible.

Businesses not performing Essential Services are not open for use or access by the public, effectively ordering a shutdown of operations. This mandate is subject to a long and broad list of exceptions found on [Attachment A](#) to Order 22.

Order 21 also expands Executive Order No. 17 to mandate the closure of, among other things, bars, restaurants, gyms, businesses that perform or necessitate close-contact personal services, and recreational and entertainment venues and gatherings. Businesses that can provide delivery or telephone orders are encouraged to do so, and persons are encouraged to support such businesses to the extent feasible.

Five Lessons Learned From The Orders

1. **Not a "Shelter in Place" Mandate.** The Governor explicitly states Order 22 is not a "shelter in place" mandate but a recommendation that persons stay at home and avoid contact as much as possible.
2. **Businesses Not Deemed to be Engaged in "Essential Services" May Continue to Operate on a Limited Basis.** Consistent with the orders of several other states and localities, Order 22 permits the continued "minimum necessary activities required to maintain any business or organization," regardless whether the business is deemed "Essential," including:

Maintaining the value of the business' inventory;

Preserving the condition of the business' physical plant and equipment, livestock, or other assets;

Ensuring the security of the business;

Protecting the business' mail, payroll, and employee benefits;

Facilitating employees of the business being able to continue to work remotely from their residences; and

Conducting any functions related to those activities.

3. **Pay Attention to Similar "Stay at Home" Orders in Your City or County.** Order 22 does not limit any locality from issuing further orders, but the Governor's Orders will not be limited by any law, order, rule, or regulation.
4. **Listing of "Essential Businesses" Under Order 22 is Broader Than Many States.** While it is common for states and counties to cite in their respective orders to the National Cybersecurity and Infrastructure Agency's "Guidance on the Essential Critical Infrastructure Workforce" to identify what operations and services are essential to continued critical infrastructure viability, Order 22's listing of what constitutes an "Essential Services" business in the State of Tennessee is both broad and far-reaching. Before assuming your business is not essential and must shut down, carefully review [Attachment A](#) to Order 22 to determine if a plausible argument can be made that your business fits into one of the several broad categories.
5. **Travel is Largely Unaffected by Order 22.** While "Essential Travel" is deemed an "Essential Activity," Order 22's definition of Essential Travel is broad and includes all of the following:

Travel related to Essential Activity (or otherwise permitted by Order 22);

Travel related to performing Essential Services;

Travel to care for the elderly, minors, dependents, persons with disabilities, and other vulnerable persons;

Travel to or from educational institutions for the purposes of receiving materials for distance learning, receiving meals, and other related services;

Travel to and from outside of the State of Tennessee; and

Travel required by law, law enforcement, or court order, including to transport children pursuant to a custody agreement.

If you have any questions about whether your business or any of its employees are essential workers, or need guidance on ensuring their ability to travel from home to work or throughout Tennessee on business, please contact [Culver Schmid](#) or [Stephen McStravick](#). Also, please visit the [Coronavirus \(COVID-19\): What you Need to Know](#) information page on our website.