

Mississippi Issues Shelter-in-Place Order: What You Need To Know

Key Points:

- Mississippi Governor Tate Reeves issued an Executive Order, effective April 3, requiring all individuals within Mississippi to stay home except for specified essential activities.
- All businesses that do not conduct essential business or operations, as defined by this and prior Executive Orders, must cease all operations except for certain minimum operations.
- The Order goes into effect at 5:00 p.m. on Friday, April 3, and will remain in place until April 20, unless rescinded or extended.

On April 1, Mississippi Governor Tate Reeves issued a Shelter-in-Place Order (“SIP Order” – Executive Order No. 1466) requiring all individuals currently living in Mississippi to stay home or in their place of residence (e.g., hotels, shelters, or rental units used as a person’s dwelling), except as specifically allowed by the SIP Order. All individuals may leave their home or place of residence *only* for Essential Activities or Travel, or to participate in Essential Business or Operations, as defined by previous Executive Order No. 1463, issued March 24, 2020 and supplemented March 26. All businesses in the State, except Essential Business and Operations, are required to cease all operations and activities other than Minimum Operations, as defined in the SIP Order.

Additionally, the SIP Order prohibits all social or non-essential gatherings of 10 or more people where individuals are closer than six feet in proximity. All such gatherings are cancelled and must be rescheduled.

The SIP Order goes into effect at 5:00 p.m. on Friday, April 3, and will last until Monday, April 20, unless rescinded or extended. To date, 36 states have adopted similar statewide policies. Mississippi, Georgia, and Florida will join those 36 states with statewide shelter-in-place orders taking effect on April 3. The following is a summary of what you need to know from the SIP Order.

What are Essential Activities?

Individuals may leave their residence to perform any of the following Essential Activities:

- **Health and safety.** To engage in activities or perform tasks essential to their health and safety; the health and safety of a family/household member; or the health and safety of a person who is unable or should not leave his or her home (e.g., vulnerable people such as the elderly, children, or people with disabilities).
- **Necessary food, supplies, and services.** To obtain food, supplies, or services for themselves or a member of the family/household necessary to maintain safety, sanitation, or operation of the home or residence or to deliver such goods or services to vulnerable people who cannot or should not leave their home.
- **Individual outdoor activity.** To engage in individual outdoor activity and recreation. However, the SIP Order requires all individuals using outdoor space to maintain social distancing (keeping a minimum of 6 feet between each individual) and avoid gatherings of 10 or more. In addition, all parks, beaches, lakes, reservoirs, and playgrounds are closed, with the exception of walking trails.
- **Work for Essential Business or Minimum Operations.** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined by EO 1463 and discussed below, includes Essential Government Functions, Essential Healthcare Operations, and Essential Infrastructure, among other things) or to carry out activities related to Minimum Operations of Non-essential Business.

What are Essential Businesses and Operations?

Essential Businesses and Operations are entities or organizations that fall under any category identified by EO 1463. The SIP Order specifically adopts these categories of Essential Business and Operations with one clarification. Under the SIP Order Essential Healthcare Operations should be broadly construed; however, it specifically *excludes* fitness gyms, dance studios, clubs, tattoo parlors, spas, salons, barber shops, and similar personal care or grooming facilities. Each of these businesses are presumed to be Non-essential Business subject to the order to cease activities other than Minimum Operations.

The categories of Essential Business and Operations include:

- **Essential Government Functions**, including first responders, law enforcement, fire prevention and response, EMTs, 911 call centers, emergency management personnel, military, courts and court personnel, corrections, probation and parole, child protection or welfare, and all vendors supporting law enforcement and emergency management operations or services;
- **Essential Healthcare Operations**, including (but not by way or limitation based on the SIP Order's instruction that such Operations should be broadly construed) hospitals, clinics, research and laboratory operations, nursing homes, assisted living facilities, residential health care facilities, elder care, home health workers or aides, medical wholesale or distribution, medical supply and equipment manufacturers or providers, medical or hazardous waste disposal, and any other ancillary healthcare services;
 - As noted, the SIP Order specifically excludes from this category fitness gyms, dance studios, clubs, tattoo parlors, spas, salons, barber shops, and similar personal care or grooming facilities and services.
- **Essential Infrastructure**, including businesses falling into a variety of categories, such as:
 - Power generation and delivery, including power plants, nuclear facilities, utility poles and components;
 - Fuel production and delivery, including petroleum producers, suppliers, and distributors;
 - Supply chain companies;

- Communications, including wireless communications, telecommunications, communication sales or customer support, data centers, electronic security or safety services, and cybersecurity operations;
 - Waterways, including flood control, operation of dams, and public water and wastewater;
 - Transportation, including operation of airports, ports, roads, and highways, mass transit, automotive sales and repair, vehicle rental services, taxi and network providers (e.g., Uber and Lyft), freight and passenger rail, pipelines, and other transportation infrastructure; and
 - Hotels and commercial lodging services.
- **Manufacturing** of any products used by any other Essential Business but also specifically including food processing and production, pharmaceuticals, medical equipment, medical devices and supplies, technology or biotechnology, chemical products, automotive production and suppliers, steel and steel products, fuel and petroleum exploration and production, lubricants, greases and engine oils, mining, national defense, sanitary and cleaning products, household products, and personal care products;
 - **Agriculture and Farms**, including food cultivation, livestock, cattle, poultry, or seafood operations, livestock auctions, livestock broker/dealers, livestock transporters, feedlots, feed stores, farmer's markets, agricultural equipment repair, aquaculture, horticulture, pesticides, herbicides, and fertilizer producers and distributors, forest products, paper products, meat processing facilities rendering facilities and transporters, feed processing facilities, and veterinary services;
 - **Essential Retail**, including all supermarkets, food and beverage stores, food providers, convenience stores, gas stations, pharmacies, hardware and building material stores, and restaurants or bars;
 - **NOTE:** Restaurants and bars are limited to drive-thru, curbside, or delivery services. They can no longer remain open for dine-in services.
 - **Essential Services**, including trash collection, mail and shipping services, home repair, warehouse, distribution, fulfillment centers, and laundromats;
 - **Media**, including newspapers, digital news sites, television, radio, and other media services;
 - **Education**, including educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning, performing critical research or other essential functions, and preparing and transporting free and reduced meals to eligible students;
 - **Financial Services**, including banks and related financial institutions, insurance, payroll, accounting, and financial transaction processing services, and services related to financial markets;
 - **Professional Services**, including legal services, accounting services, insurance services, and real estate services, which specifically include appraisal and title services;
 - **Providers of Basic Necessities to Economically Disadvantaged Populations**, including businesses, non-profit organizations, food banks, foster care, homeless shelters, and congregate care facilities;
 - **Construction**, including construction-related services, lumber, building materials and hardware, electricians, plumbers, exterminators, cleaning and janitorial services, HVAC repair and water heating industries, painting, moving and relocating services, other skilled trades, and professionals for maintaining Essential Infrastructure;
 - **Essential Services to Maintain Safety, Sanitation, and Essential Business and Operations**, which entails broad services necessary to maintain residences or essential businesses and specifically includes firearm and ammunition manufacturers and retailers, building code enforcement, security, emergency management and response, building cleaning and disinfection, mortuaries, and cemeteries;
 - **Defense Industrial Base**, including employers and personnel who support products and services required to meet national security commitments to the Federal Government or U.S. Military and specifically including all companies or their subcontractors performing contracts for or providing materials to the Department of Defense or government-owned facilities;

- **Vendors Providing Essential Services or Products**, including logistics and technology support, childcare programs or services, medical or hazardous waste disposal, and any service necessary for continuing operation of Essential Business and Operations or operation of government agencies;
- **Religious Entities**, including religious or faith-based facilities and religious gatherings, subject to the SIP Order requirement to comply with social distancing requirements and the limitation of all gatherings of 10 or more people;
- Any workers or industries identified by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) in its “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response” (specifically linked in EO 1463).

Are companies that supply an Essential Business essential?

In most cases, yes. The SIP Order includes a catchall inclusion of all vendors providing services and products to ensure the continuing operation of Essential Business and Operation are considered “Essential” itself and may continue operation. In addition, many suppliers to Essential Business and Operations will be subsumed in the categories listed above, even if they are not included in the same category as the business it supplies. For example, food processing is included in Manufacturing; its suppliers or servicers may include food cultivation operations (under Agriculture), supply chain companies (under Essential Infrastructure), and building cleaning and disinfection (under Essential Services to Maintain Sanitation), among others.

Any company, service provider, or supplier that is unsure of whether its business is included within the Essential Business and Operations categories is encouraged to contact any of the attorneys listed below.

If I am not an Essential Business, can I still operate portions of my business (payroll, mail, IT, security)?

Yes, you can still perform “**Minimum Operations**,” as defined by the SIP Order, as long as you continue to comply with social distancing requirements (to the extent possible) while carrying out those Minimum Operations, which are defined as the activities necessary for the business to:

- Maintain the condition of facilities, premises, and equipment;
- Maintain the value of business inventory;
- Process payroll and employee benefits;
- Ensure security; and
- Facilitate employees of the business to work remotely from their residences.

What is Essential Travel?

The SIP Order permits Essential Travel provided individuals engaged in Essential Travel adhere to social distancing guidance and engage in “aggressive” hygiene, including frequent handwashing and use of hand sanitizer. Essential Travel includes:

- Travel for Essential Business and Operations;
- Travel for Essential Activities;

- Travel for care of vulnerable persons, including the elderly, minors, dependents, or people with disabilities, including travel to obtain COVID-19 testing for such individuals;
- Travel to/from educational institutions for purposes of receiving distance learning materials, receiving meals, or other education-related purposes; and
- Travel required by law enforcement or court order, including pursuant to child custody agreements.

Do my employees need documentation to travel?

Under the SIP Order, documentation is not required for an employee to travel to or from work if your business is deemed an Essential Business and Operation. However, because the Order's "stay at home" provisions will be enforced by state and local law enforcement, employers should consider providing employees with appropriate documentation to support their travel to and from work.

In particular, the documentation should:

- State the employer's designation as an Essential Business and Operation;
- Identify (if possible) the specific category of Essential Business and Operation applicable to the employer;
- State that the employee's travel to/from work at an Essential Business and Operation is Essential Travel; and
- Confirm that the employer is following all guidelines from the CDC and the Mississippi Department of Health.

Are there penalties for not following the Order? If not, how will it be enforced?

Yes, the SIP permits enforcement by all State, County, and Local law enforcement as well as State and Local Departments of Health. Violations of the SIP Order are subject to Mississippi Code § 33-15-43, which provides penalties not to exceed a fine of \$500 or imprisonment of six months.

When does the Order go into effect?

The Order goes into effect at 5:00 p.m. on Friday, April 3, 2020.

How long does the Order last?

The Order will remain in effect until April 20, 2020 unless rescinded or extended.

Where can I find more information?

The "COVID-19 FAQs" page on the Mississippi Emergency Management Agency website provides various information on the SIP Order, small business loans available for impacted businesses, and unemployment benefits.