

Guidance to Manufacturers in Managing Operations during the COVID-19 Crisis

Article

March 23, 2020

As the COVID-19 crisis continues for the foreseeable future, manufacturers will become the life-line of our country for two reasons. First, manufacturers will be relied upon to produce much needed supplies, both medical and home-essential supplies. Second, manufacturers will be critical to keeping the supply chains from grinding to a standstill.

“Safer At Home” Order

On March 23, 2020, Governor Evers announced that he would be issuing a “Safer At Home” Order on Tuesday, March 24, 2020. Although using a different name, the order appears to be effectively a “shelter in place” order, which has been executed in a variety of other jurisdictions around the country over the past two weeks.

A “shelter in place” order requires individuals to stay at home and businesses to close unless they meet one of the defined exceptions and are deemed to be an “essential business or operation.” Individuals are allowed to travel for essential activities, such as obtaining food, household consumer products, or supplies for themselves or family members. They may also go outside, provided they maintain six feet of distance from others. They may also leave to work at an essential business or operation.

Essential Businesses and Operations

A “shelter in place” order requires all non-essential businesses to close unless they meet a defined exception and are determined to be an “essential business or operation.” The “Safer At Home” Order has not yet been released; therefore, no one can say with certainty what it will contain and precisely how Wisconsin will define “essential” and “non-essential businesses.” However, the federal government has issued guidance as to sixteen infrastructure sectors it considers to be “essential business” sectors.

Additionally, as more states issue “shelter in place” orders, those orders help guide what states are considering “essential businesses.” Michigan, Illinois, and Ohio have all issued versions of the “shelter in place” order. Michigan’s order is very similar to the sixteen “essential business” sectors defined by the federal

PROFESSIONALS

Sherry D. Coley
Partner

Tiffany E. Woelfel
Partner

RELATED SERVICES

Corporate & Securities

Manufacturing & Food
Processing

government. Illinois and Ohio start with those sixteen sectors and then expand beyond this to incorporate other businesses and manufacturers as “essential.”

Because Wisconsin’s “Safer At Home” Order has not yet been released, it is unclear how broadly Wisconsin will define an “essential business.” However, what we can comfortably say is that it is unlikely that Wisconsin’s definition will be more narrow than the federal government’s. Therefore, we will use the federal government’s “essential business” categorizations as a starting point. If Wisconsin defines “essential business” more broadly, this will mean that more businesses are considered essential and will be allowed to remain open.

The federal government identifies sixteen categories of “essential critical infrastructure workers.” These include: health care and public health, including hospitals, doctors, nursing homes, pharmacies, testing facilities, and those that work to build, invent, manufacture, or distribute the tools, devices, and equipment that these industries need, such as medical and cleaning equipment; law enforcement, public safety officials, first responders, and their employees, including contracted vendors; food and agriculture, including grocery stores, restaurants with delivery, food manufacturers, farms, veterinarians, and those that manufacture products used in the creation, planting, distributing, testing and growing, of food and food distribution supplies; those in the energy industry, including natural gas, nuclear, petroleum workers; transportation and logistics; public works; essential functions of community-based government; hazardous materials; chemical production; the defense base industry; and those involved in the critical manufacturing of materials and products needed in the supply chains of the already identified industries.

Critically for businesses and manufacturers, if they sell, manufacture, deliver, distribute, or otherwise provide goods or services for these industries or for a component of the supply chains that service these “essential business” industries, such entities are also considered “essential businesses.” Therefore, waste removal companies are considered essential. As are businesses or manufacturers who create a component in the supply chain necessary to service the “essential businesses and operations.” For example, a business that manufactures capsules, in which cleaning liquid or medicine can be encapsulated, is an “essential business.” Similarly, a manufacturer creating shipping containers or to-go food containers would be “essential.” Moreover, it is not merely the end-producer that is considered “an essential business,” but those that create or are responsible for materials used in the supply-chain of these “essential businesses” who are considered “essential.”

Adaptability and Creativity

Manufacturers are also encouraged to be adaptable and creative. This includes adaptability and creativity in managing business, such as determining how work can be performed and whether someone could work remotely.

Guidance to Manufacturers in Managing Operations during the COVID-19 Crisis

But this also includes being adaptable and creative to the types of products that are being manufactured. State and federal governments have already implored manufacturers to convert their lines to products desperately needed. In Wisconsin, the state is asking manufacturers to assess whether they can adapt their lines to make anti-septic, disinfectant, alcohol, and N-95 face masks. Nationally, the call has been made for companies to transition to making ventilators and other needed medical equipment.

Manufacturers should think creatively about whether they can adapt their product lines to produce these needed items. Distilleries across Wisconsin, like Milwaukee's Central Standard Distillery, have begun to convert their alcohol into disinfectant products.

Manufacturers should also consider whether they can adapt their products to support secondary needs arising from business restrictions and most individuals remaining at home. For example, when restaurants were restricted to only take-out or delivery of food, Westgate Products, an Oshkosh packaging company, began offering "to go containers" to restaurants who may not have needed them before but were now attempting to convert their delivery methods.

When reviewing their business operations, manufacturers should think critically and creatively about whether they are an "essential business and operation" and whether they service or otherwise provide goods included within the supply chain of an "essential business and operation." "Essential businesses and operations" are not limited merely to food and medical supplies. Rather, many manufacturers and businesses may be considered "essential" if they either provide the "essential goods and services" directly, if they provide goods and services directly to "essential businesses," or if they provide a good or service needed in the supply chains of essential businesses and operations.

Preparation

Manufacturers need to prepare for the COVID-19 crisis and how it could affect plant operations. Determine who is essential personnel—critical employees without whom operations could not continue. If an individual's role can be adapted to allow working from a remote location, they should be allowed to do so.

To the extent they are capable, manufacturers should be prepared to work with skeleton crews on a rotating basis. Manufacturers should also rotate and distribute management and key decision-making personnel. Smaller, rotating crews are key for several reasons. First, the fewer number of individuals lowers the risk that a contagious individual will enter the office, plant, or factory, and it allows for more space (and social distancing) between employees. Second, if an individual becomes sick, there are fewer employees exposed, and thus required to self-quarantine. Another crew could resume operations after a thorough cleaning of the exposed areas. It is imperative that key decision-making

Guidance to Manufacturers in Managing Operations during the COVID-19 Crisis

personnel and management are not working the same shift, but rather staggered to prevent the loss of all key personnel at the same time. Try to keep crews consistent, without employees switching between crews. Doing so will minimize the risk of the virus spreading between the crews.

Manufacturers also need to be prepared to handle situations when exposure occurs. Establish a policy to address employee exposure with varied responses depending on the level of possible exposure. It is vital to have policies with routine cleaning of equipment and space now; as well as, deep-cleaning to be performed if exposure to someone who has tested positive for COVID-19 occurs.

Awareness

Manufacturers need to keep aware of the ongoing COVID-19 crisis from a variety of sources. Review and monitor your supply chain, especially sources for raw materials and parts. Flexibility in substituting raw-materials and planning for doing so will prevent delays if the supply chain is interrupted.

Additionally, manufacturers need to keep aware of changes at the federal, state, and local levels, including executive orders, passed legislation, and changes to regulations. The Families First Coronavirus Response Act was recently enacted, which establishes a federal emergency paid-leave benefits program, which requires employers with fewer than 500 employees to provide two weeks' worth of paid sick leave if employees are unable to work because of COVID-19 (including for self-quarantine). Employers will receive tax credits for these benefits. The Act also imposes restrictions on how an employer may treat such an employee.

Also recently, both state and federal governments have moved to lift restrictions and regulations on how much commercial truck drivers can drive if delivering food, consumer goods, and emergency supplies. For manufacturers of such supplies, this will impact decisions about production and delivery. Keeping updated on these rapid changes will allow manufacturers to adapt and thrive.

Guidance to Manufacturers in Managing Operations during the COVID-19 Crisis