STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-40

Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Since the World Health Organization characterized the COVID-19 outbreak as a pandemic on March 11, 2020, confirmed cases of COVID-19 in Minnesota have rapidly increased. Minnesota has taken extraordinary steps to prevent and respond to the COVID-19 pandemic. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. On April 13, 2020, after notifying the Legislature, I issued Executive Order 20-35, extending the peacetime emergency declared in Executive Order 20-01.

In Executive Order 20-20, and consistent with federal guidance and nationwide efforts to slow the spread of COVID-19, I directed Minnesotans to stay at home, except to participate in certain exempted activities and work in Critical Sectors. I modified and extended this requirement in Executive Orders 20-33 and 20-38. These actions have saved lives by slowing the spread of COVID-19 in Minnesota, but they have also impacted our economy. Many Minnesotans, who neither work in a Critical Sector nor can work from home, have been unable to work. Many businesses have been unable to open. In Executive Order 20-33, I directed the Commissioners of the Minnesota Department of Health ("MDH"), the Minnesota Department of Employment and Economic Development ("DEED"), and the Minnesota Department of Labor and Industry ("DLI") to begin planning to allow certain non-Critical Sector workers to return to work when it is safe to do so. I explained that such a plan must include guidelines and requirements for appropriate social distancing, hygiene, and public health best practices. This Executive Order represents the next step in that plan, allowing for certain Non-Critical Sector workers to return to work once their employers have planned for and provided a safe work environment.

Recognizing that certain work environments are more conducive to health and safety precautions and best practices, this Executive Order focuses on industrial and manufacturing businesses, as well as businesses in office-based settings. Because businesses in these categories generally do

not involve direct interactions with customers or the general public, they have an opportunity to resume work through preparation and planning that will allow for compliance with the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes 2019, Chapter 182 ("Minnesota OSHA Standards"), in addition to guidelines related to COVID-19 set forth by the Minnesota Department of Health and the Centers for Disease Control and Prevention ("MDH and CDC Guidelines"). As we take this limited next step, we will continue to monitor the level of COVID-19 cases and explore whether workers can safely return to other workplaces.

In Minnesota Statutes 2019, section 12.02, the Minnesota Legislature conferred upon the Governor emergency powers "in order to (1) ensure that preparations of this state will be adequate to deal with disasters, (2) generally protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state." Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 1, the Governor has general authority to control the state's emergency management as well as carry out the provisions of Minnesota's Emergency Management Act.

Minnesota Statutes 2019, section 12.21, subdivision 3(7), authorizes the Governor to cooperate with federal and state agencies in "matters pertaining to the emergency management of the state and nation." This includes "the direction or control of . . . the conduct of persons in the state, including entrance or exit from any stricken or threatened public place, occupancy of facilities, and . . . public meetings or gatherings." Pursuant to subdivision 3 of that same section, the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions" of Minnesota Statutes 2019, Chapter 12. When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the peacetime emergency. Any inconsistent rules or ordinances of any agency or political subdivision of the state are suspended during the pendency of the emergency.

For these reasons, I order as follows:

1. Notwithstanding the requirement to stay at home in Executive Order 20-33, beginning no sooner than April 26, 2020 at 11:59 pm, workers for Non-Critical Exempt Businesses, as defined in this Executive Order, may return to work upon their Non-Critical Exempt Business's completion of the requirements set forth in this Executive Order.

2. As with the Critical Sector worker exemptions set forth in Executive Order 20-33, the exemptions created for workers for Non-Critical Exempt Businesses in this Executive Order apply only to travel to and from an individual's home or residence and place of work and an individual's performance of work duties that cannot be done at their home or residence. Travel may include transportation to and from child care or school settings as necessary to ensure the safe care of children.

3. Nothing in this Executive Order should be interpreted to allow or encourage workers who can work from home to leave home for work. As ordered in Executive Order 20-33, **all workers who can work from home must do so**.

4. **Definitions**. As used in this Executive Order, "workers" and "personnel" are broadly defined to include owners, proprietors, employees, contractors, vendors, volunteers,

and interns. As used in this Executive Order, "Critical Sectors" is defined to include the categories set forth in paragraph 6 of Executive Order 20-33, as amended by Executive Order 20-38. "Non-Critical Exempt Businesses" are businesses that are within the scope of paragraph 5 of this Executive Order and that complete and comply with the requirements set forth in paragraph 6 of this Executive Order.

5. **Businesses covered by this Executive Order.** Non-Critical Exempt Businesses covered by this Executive Order are limited to the following sectors:

    a. **Industrial and manufacturing businesses.** Businesses in this category include industrial or manufacturing businesses, to the extent that such businesses' employees are not exempt Critical Sector workers under Executive Order 20-33, as amended by Executive Order 20-38. This category includes wholesale trade, warehousing, and places of employment in which goods are in the process of being created. This category does not include customer-facing retail environments associated with an industrial or manufacturing business in this category. DEED will provide additional guidance related to the businesses included in this category at https://mn.gov/deed/safework/

    b. **Office-based businesses.** Businesses in this category include office-based businesses where workers do their work within an office space, at their desk, and their work is primarily not customer facing, to the extent that their employees are not exempt Critical Sector workers under Executive Order 20-33, as amended by Executive Order 20-38. This category does not include customer-facing retail environments associated with office-based businesses in this category. DEED will provide additional guidance related to the businesses included in this category at https://mn.gov/deed/safework/

6. **Requirements for Non-Critical Exempt Businesses.** Before workers may return to work at a Non-Critical Exempt Business under this Executive Order, the Non-Critical Exempt Business must establish and implement a COVID-19 Preparedness Plan ("Plan"). Each Plan must provide for the business's implementation of Minnesota OSHA Standards and MDH and CDC Guidelines in their workplaces. These requirements are set forth in guidance published by DEED and DLI ("Plan Guidance") and available at https://mn.gov/deed/safework/

    a. **Required Plan content.** As set forth in the Plan Guidance, at a minimum, each Plan must adequately address the following areas.

        i. **Require work from home whenever possible.** All Plans must ensure that all workers who can work from home continue to do so.

        ii. **Ensure that sick workers stay home.** All Plans must establish policies and procedures, including health screenings, that prevent sick workers from entering the workplace.

iii. **Social distancing.** All Plans must establish social distancing policies and procedures.

iv. **Employee hygiene and source control.** All Plans must establish hygiene and source control policies for workers.

v. **Cleaning and disinfection protocols.** All Plans must establish cleaning and disinfection protocols for areas within the workplace.

b. **Optional template.** A template COVID-19 Preparedness Plan, which covers the above requirements, is available as part of the Plan Guidance, available at https://mn.gov/deed/safework/

c. **Certification and signature.** Senior management responsible for implementing the Plan must sign and certify the Plan, affirming their commitment to implement and follow the Plan.

d. **Dissemination and posting.** A Non-Critical Exempt Business must provide its Plan, in writing, to all workers, and the Plan must be posted at all of the business's workplaces in locations that will allow for the Plan to be readily reviewed by all workers. Where physical posting is impracticable, the Plan can be posted electronically, provided that the Plan is received by all workers and remains available for their review.

e. **Training.** Non-Critical Exempt Businesses must ensure that training is provided to workers on the contents of their Plan and required procedures, so that all workers understand and are able to perform the precautions necessary to protect themselves and their co-workers. This training should be easy to understand and available in the appropriate language and literacy level for all workers. Businesses should also take steps to supervise workers and ensure that workers understand and adhere to necessary precautions to prevent COVID-19 transmission. Documentation demonstrating compliance with this training requirement must be maintained and made available to regulatory authorities and public safety officers, including DLI, upon request.

f. **Compliance.** Workers and management must work together to ensure compliance with the Plan, implement all protocols, policies, and procedures, and create a safe and healthy work environment.

g. **Availability to regulatory authorities and public safety officers.** Non-Critical Exempt Businesses do not need to submit their Plans for preapproval. Upon request, Non-Critical Exempt Businesses must make their Plans available to regulatory authorities and public safety officers, including DLI.

7. In the event of a complaint or dispute related to a business's Plan, DLI is authorized to determine whether the Plan adequately implements Minnesota OSHA Standards and MDH and CDC Guidelines in its workplaces.

8. All exempted work for Non-Critical Exempt Businesses must be conducted in a manner that adheres to Minnesota OSHA Standards and MDH and CDC Guidelines, including social distancing and hygiene practices. Under existing law and authority, DLI may issue citations, civil penalties, or closure orders to places of employment with unsafe or unhealthy conditions, and DLI may penalize businesses that retaliate against employees who raise safety and health concerns.

9. I urge all Minnesotans to voluntarily comply with this Executive Order. Pursuant to Minnesota Statutes 2019, section 12.45, a worker who willfully violates this Executive Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed $1,000 or by imprisonment for not more than 90 days. Any business owner, manager, or supervisor who requires or encourages any of their employees to violate this Executive Order is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed $3,000 or by imprisonment for not more than a year. In addition to those criminal penalties, the Attorney General, as well as city and county attorneys, may seek any civil relief available pursuant to Minnesota Statutes 2019, section 8.31, for violations of this Executive Order, including civil penalties up to $25,000 per occurrence from businesses and injunctive relief. Nothing in this Executive Order is intended to encourage or allow law enforcement to transgress individual constitutional rights.

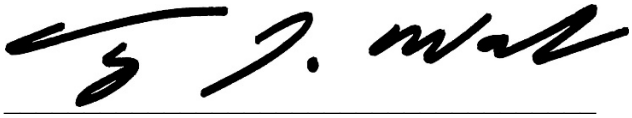
10. Apart from the additional exemptions provided in this order, all requirements of Executive Order 20-33 remain in effect.

11. This Executive Order may be extended by a future Executive Order, with the approval of the Executive Council.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately upon approval by the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on April 23, 2020.



Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on April 24, 2020:

Alice Roberts-Davis
Secretary, Executive Council

Filed on April 24, 2020
Office of the Minnesota
Secretary of State,
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