

CLIENT ALERT

NEW EMERGENCY PROCLAMATION AND EXECUTIVE ORDERS MOVE ILLINOIS INTO PHASE 4

On Friday June 26, 2020, Governor Pritzker issued a new Emergency Disaster Proclamation and Executive Orders 2020-43 and 2020-44, officially advancing the State of Illinois into Phase 4 of the Restore Illinois plan. This comes after the Governor announced earlier in the week that the State of Illinois had satisfied the public health criteria required to allow gatherings of up to 50 people in Phase 4, and the Illinois Department of Commerce and Economic Opportunity (DCEO) issued updated industry-specific guidance for Phase Four operations. The DCEO Guidelines can be found at <https://dceocovid19resources.com/restore-illinois/restore-illinois-phase-4/>.

Key Provisions

1. Continued Authorization for Virtual Public Meetings under the Open Meetings Act

A. In-Person Meeting Attendance by More than 50 People Not Feasible.

The Governor's Disaster Proclamation expressly includes the necessary finding required by the newly adopted provision of the Open Meetings Act (*Section 7(e)(4)*) that enables virtual meetings. Specifically, in this case, the Governor found that public health concerns render in-person attendance of more than 50 people at the regular meeting location not feasible (*Section 12 of Disaster Proclamation*).

This is a change from Phase 3, during which the Governor made a finding that in-person attendance of more than 10 people was not feasible.

B. Further Clarification of In-Person Meeting Requirements

Executive Order 2020-44 extends the Governor's previous executive orders through July 26, 2020, and supplements the in-person meeting requirements for public bodies (previously established in EO-2020-07, as amended by EO 2020-33) by including the following provisions:

- Public bodies are "encouraged" to ensure that at least one member of the public body is physically present at the meeting if others are attending remotely (note the use of the word "encouraged" instead of "required");
- Public bodies must take steps to provide, video, audio, and/or telephone access to meetings to ensure members of the public may monitor the meeting; and
- Public bodies must update their websites and social media feeds to keep the public fully apprised of any modifications to their meeting schedules or the format of their meetings due to Covid-19, as well as their activities related to Covid-19.

Accordingly, local public bodies may continue to hold virtual public meetings in Phase 4 so long as (a) the local head of the public body has deemed in-person meetings to be impractical and imprudent, and (2) the meeting otherwise complies with the requirements of Section 7(e) of the Open Meetings Act.

Importantly, while the members of the public body itself may be “remote” during the virtual meeting, members of the public must be allowed to listen to the public meeting at the regular meeting location. The number of people permitted to be present at the regular meeting location will depend on the capacity of the meeting room accounting for social distancing, but in no event can the number of people in the room exceed 50 people. As noted below, the exact language in EO 2020-43 for all indoor gatherings is “the lesser of fifty attendees or fifty percent of room capacity.”

3. Expansion of Permitted Activities

EO 2020-43 expands the resumption of certain activities beyond the restrictions under Phase 3, including that the following:

- Indoor venues and meeting spaces can operate with the lesser of 50 attendees or 50 percent of room capacity in accordance with DCEO guidance.
- Restaurants and bars:
 - Restaurants and bars may resume on-premises service as permitted by DCEO guidance, but are encouraged to continue to provide off-premises service.
 - Given DCEO’s restrictions on in-person service at restaurants and bars, and EO 2020-43’s encouragement to provide off-premises services, municipalities that established temporary policies allowing expanded outdoor dining and service of mixed drinks for pickup and delivery should consider whether to continue those policies through the 30-day term of the new Disaster Proclamation.
- Fitness and exercise gyms may open in a manner consistent with DCEO guidance, which involves operating for member workouts at a maximum of 50 percent capacity, subject to social distancing and other precautions.
- Places of public amusement (including, without limitation, arcades, bowling alleys, driving ranges, museums and aquariums, zoos and botanical gardens, theaters and performing arts and outdoor seated spectator events) may resume services consistent with DCEO guidance for indoor and outdoor recreation.

4. Continuation of Public Health Requirements for Individuals

Existing public health requirements established in EO 2020-38 are incorporated in EO 2020-43 and remain in place for all businesses and the general public, including:

- Social distancing - While outside or using shared spaces, individuals must, to the extent possible, practice social distancing by maintaining a six-foot-distance from people that do not live with them.
- Face Coverings – Individuals over the age of two continue to be required to wear a face covering in public places or when working. This applies to both indoor spaces as well as public outdoor places where social distancing cannot be maintained.
- Outdoor activity – Illinoisans are encouraged to conduct business and activities outdoors.

5. Continuation of Existing Direction for Employees and Certain Businesses

Existing requirements from EO 2020-38 for businesses and employees that are not further expanded in Phase 4 remain in place under EO 2020-43, including the following:

- Retail shopping:
 - The number of shoppers must be capped at 50% of the store capacity or at the occupancy limits based on store square footage set by DCEO.
 - Retail businesses must communicate with customers about social distancing and face covering requirements. Businesses are encouraged to do so through the use of in-store signage, public services announcements, and advertisements.
 - Retail businesses must discontinue the use of reusable bags.
- Personal Services (such as spas, hair salons, barber shops, nail salons, waxing centers, and tattoo parlors), outdoor recreation, youth camps and sports; and indoor and outdoor amusement places are all permitted to operate so long as they each comply with the applicable guidelines established by DCEO.
- All businesses:
 - May continue to engage in basic operations including:
 - Performing necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions;
 - Performing necessary activities to facilitate employees of the business being able to work remotely; and
 - Fulfilling online and telephonic retail orders through pick-up or delivery.
 - Must mark out six-foot distances on the physical premises to encourage and facilitate social distancing.
 - Must make sanitizing products available for customers and to regularly sanitize products.
 - Must offer separate hours of operation for vulnerable populations.
 - Are encouraged to offer online and remote access to the facility.
 - Must provide employees with face coverings.

6. Exemptions.

- Free Exercise of Religion: EO 2020-43 expressly exempts the exercise of religion. EO 2020-43 encourages, but does not mandate, religious gatherings and services to be held outdoors or to be limited to 10 or fewer people if held indoors.
- Emergency Functions: Emergency personnel remain exempt from EO 2020-43, but are encouraged to practice social distancing and take recommended public health measures.
- Governmental Functions: EO 2020-43 does not apply to the federal government and does not affect State or municipal services needed to ensure the continuing operation of government agencies or to provide for or support the health, safety, and welfare of the public.