

Executive Order 2020-038 Extends Shelter-in-Place Order; Modifications Announced

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PRACTICE AREAS

- Government Affairs & Public Policy

An McV Government Affairs Alert

May 2, 2020

On May 1, 2020, Governor Wanda Vázquez-Garced signed Executive Order 2020-038 (“EO 2020-038”) to, among other matters, extend the period of the mandatory “Shelter-in-Place” Order issued under **Executive Order 2020-033**, as amended by **Executive Order 2020-034**.

In addition, EO 2020-038 eases certain limitations imposed by previous administrative bulletins by considering the Puerto Rico Economic and Medical Task Forces’ recommendations and guidelines set forth in the United States Department of National Security’s *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response*.

Shelter-in-Place and Exemptions

Beginning on May 3, 2020 and until May 25, 2020, a mandatory “Shelter-In-Place” order requiring all Puerto Rico residents to remain in their residence or place of lodging remains in effect.

During this period, individuals are required to remain in their residence or place of lodging 24 hours a day seven days a week, but may exit their residence or lodging from 5:00 a.m. to 7:00 p.m. solely for the following reasons:

- To attend medical appointments, visit hospitals, clinical labs, or hospital/ medical service centers
- To acquire or purchase food, medications and first care products
- To visit any of the exempted businesses to attend a necessary or urgent matter
- To procure exempted services (as defined further below)
- To provide exempted services

Individuals who allow people to assemble in their residences, other than members of their family, will be deemed to be in violation of EO 2020-038.

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As an exception, individuals may now leave their residence or place of lodging from 5:00 a.m. to 3:00 p.m. to exercise outdoors, provided they wear face masks and adhere to social distancing practices. However, parks, running tracks, beaches, gymnasiums and other similar establishments will continue to remain closed to the public.

Quarantine Order

Section 2 of EO 2020-038 orders individuals who believe to have been exposed to COVID-19 to remain in their place of residence for a period of 14 days, whether or not they show any symptoms. Likewise, persons diagnosed with COVID-19 must isolate themselves for a period of 14 days as instructed by their doctor.

Government Offices

According to Section 3 of EO 2020-038, government agencies shall continue offering services remotely. Government offices and agencies, with few exceptions, remain closed to the public. Depending on the nature of the agency's services, up to five employees may attend their agency's place of business twice a week. However, essential government employees will continue working according to the work plan already adopted by their agency.

Guidance Established by Agencies

The provisions of EO 2020-038 may be supplemented by regulations or guidance issued by government agencies, as approved by the Governor or, if the Governor so orders, by the Chief of Staff. Agency directors who identify essential services not exempted in this Executive Order may request the Chief of Staff to exempt said services.

Private Businesses and Exceptions (Section 5 of the Executive Order)

EO 2020-038 orders all private businesses to remain closed until May 25, 2020. This includes movie theaters, night clubs, concert halls, theaters, game salons, casinos, theme parks, gyms, bars, or other similar establishments.

Pursuant to Section 5 of EO 2020-038, the following businesses are **exempted** from the shutdown order:

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■ **Food**

- Sale of prepared food or meals solely by means of a drive-thru, carry-out, or delivery service (dining sections must remain closed to the public)
- Retail and wholesale food services
- Businesses related to the food and beverage distribution chain, including agriculture, animal feed, food and beverage manufacturers, food and beverage distributors, and hydroponic farms and agricultural businesses in general, including home gardens
- Supermarkets and food stores, including businesses with a supermarket or food store section:
 - May be open to the general public Monday through Saturday from 5:00 a.m. to 8:00 p.m. They may remain open from 7:00 p.m. to 8:00 p.m. but only to serve hospital, clinical lab and public safety employees.
 - Supermarket delivery services may continue operating until 10:00 p.m.
 - Supermarkets and food stores will be closed to the public on Sundays but may remain open in order to clean, disinfect or restock goods and merchandise
- Retail food businesses such as fresh food kiosks (fruits, greens and vegetables) opened before March 15, 2020, may remain open if adequate safety measures are adopted in order to safeguard the public's health (e.g., face masks, gloves, disinfectants, etc.) and prevent large group gatherings.

EO 2020-038 recommends supermarkets adopt special hours for customers who are older than 65 years of age.

■ **Healthcare, Medications, Medical Items or Equipment, and Pharmacies**

- Includes businesses that produce, sell or provide services related to medications, medical tools or equipment, health care services, and their distribution chain, including:
 - biotechnology and agricultural biotechnology facilities (manufacturing and sale)
 - blood banks
 - cleaning/disinfectant products and personal protective equipment manufacturers

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- clinical labs
- companies or insurance agencies that provide medical insurance plans
- dental offices
- emergency rooms
- healthcare centers
- hospital supply manufacturers
- hospitals
- medical and doctor's offices (primary, specialist and mental health)
- medical cannabis cultivation and processing facilities
- medical devices (manufacturing and sale)
- medical service clinics
- medicinal cannabis dispensaries
- optometrist offices
- pharmaceutical (manufacturing and sale)
- pharmacies may open Monday through Sunday
- senior care centers
- veterinary clinics (by appointment only)

Other important notes:

- EO 2020-038 recommends pharmacies adopt special hours for customers who are older than 65 years of age
- Doctors are encouraged to attend patients remotely through telemedicine. However, medical offices may open to attend patients in person, **by appointment only**, provided they certify having adopted strict safety and mitigation protocols promoted by the medical community and the Department of Health, as well as respecting social distancing norms and taking all other necessary steps to safeguard their employees' health.
- Elective surgical procedures are allowed to be resumed
- Dentists may offer emergency dental procedures by providing patients a phone number through which they may call in order to seek such services
- **Gas Stations and their Distribution Chain**

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- Includes the processing, sale and distribution of fuel
- Fuel refineries – gasoline, diesel, jet fuel, AV-Gas, propane gas, butane gas, natural gas, liquid gas, kerosene, among others
- Fuel blending – intermediate fuels, blended
- production, distribution and wholesale/retail sale (gas stations)
- Electronic Lottery Sales
- Vehicle Inspection Centers

These businesses may operate normally Monday through Sunday.

- **Financial Institutions**

- Banks and saving coops that provide deposit, withdrawing or payment services
- Pawn shops – only to provide pawn services and debt payments (sale of goods or merchandise is not permitted)
- Mortgage banking and other lending entities – mortgage closings may take place upon prior appointment to prevent the accumulation of scheduled closings. Clients should be called one at a time and shall be limited to attend matters that may only be addressed in person. Other transactions should be handled through electronic or remote means.

- **Organizations or Groups that Provide Services that Address the Basic Needs of Vulnerable Persons**

- Homeless shelters, food banks, victim shelters, shelters, and temporary residences

- **Auto Repair and Parts Shops**

- Auto repair and parts businesses, including auto technicians, tire services, Bodyshop, auto parts distribution and service workshops, may now operate Monday through Friday from 9:00 a.m. to 5:00 p.m. No walk-ins allowed, only customers with phone or email appointments should be served. These businesses must adopt measures to prevent COVID-19 infections (including the use of face masks and social distancing) and take steps to ensure that only one customer is serviced at a time.

- **Hardware Stores**

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- Hardware stores may provide services Monday through Friday from 9:00 a.m. to 5:00 p.m. No walk-ins allowed, only customers with phone or email appointments should be served. These businesses must adopt measures to prevent COVID-19 infections (including the use of face masks and social distancing) and take steps to ensure that only one customer is served at a time.

- **Textile**
 - Textile businesses that manufacture uniforms, footwear, components, or equipment for the Department of Defense or personal protective equipment (e.g., face masks, head covers, health gowns, gloves and other protective equipment used as healthcare protection) may remain open as long as they comply with the protocols and regulations set forth by the Puerto Rico Occupational Safety and Health Administration (“PROSHA”) to protect employees from infection of COVID-19. See **Workplace Risk Management Plans** *Below*

- **Laundry and Laundromat Services**
 - Laundry and laundromat services may now open Monday through Friday from 9:00 a.m. to 5:00 p.m. upon prior phone or email appointment to schedule delivery and pickup of clothing. In the case of laundromats, up to three employees with face masks may be present to coordinate the delivery, cleaning and pickup of clothing, without being open to the general public. See **Workplace Risk Management Plans** *Below*

- **Vehicle Inspection Centers**
 - Vehicle inspection centers may open Monday through Friday from 9:00 a.m. to 5:00 p.m. No walk-ins allowed, only customers with phone or email appointments should be served. See **Workplace Risk Management Plans** *Below*

It is important to note that the deadline extension for the renewal of auto tags that expired on March and April 2020 remains in place until May 31, 2020.

- **Ornamental Gardening Businesses**
 - Ornamental gardening businesses may open Monday through Friday from 9:00 a.m. to 5:00 p.m. No walk-ins allowed, only customers with phone or email appointments should be served.

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- **Safety**

- Includes government and private security companies

- **National Security**

- Aerospace industry manufacturing, sale and services
- Manufacturing, sale and services related to any federal agency, including the U.S. Dept. of Defense

- **Supply Chain**

- Businesses that form part of the supply chain related to goods and services exempted under Section 5 and 6 of the Executive Order

EO 2020-038 also advises exempted businesses to comply with any Price Control Measures issued by the Puerto Rico Department of Consumer Affairs (“DACO” for its Spanish acronym) throughout this period.

Exempted Services (Section 6 of the Executive Order)

The following services may be provided during the lockdown, if the services are rendered to attend an emergency requested by phone or email, without opening a store to the public:

- Air-conditioning repair and maintenance services
- Armory services for the security sector
- Call centers
- Critical Telecommunication Services - work related to the installation, network repair, maintenance, and rehabilitation of such facilities
- Data centers
- Design, sale and installation of fire hazard equipment
- Electronic transaction services
- Exporting of non-essential goods and merchandise, provided it is part of current inventory
- Funeral services – transfer of remains, embalment, cremation and interment, but no public funerary services
- Legal, accounting, and similar professional services required for sectors and activities exempted from the lockdown provisions and **that cannot otherwise be provided remotely**. They may operate by prior appointment,

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respecting social distancing norms and taking necessary steps to safeguard their employees' health.

- Logistics and transport - customs brokers, sea and land cargo consolidation services, storage and distribution services to third persons, and distribution of detergents, disinfectant, cleaning and hygiene products
- Moving services
- Notary services for any kind of service required in the ordinary course of business
- Online college services – this sector may use their facilities solely to provide education and student services remotely. Campus facilities must remain closed to the public. Only administrative, IT, and maintenance employees may work at the institution's facilities, provided social distancing norms are upheld.
- Parcel delivery systems provided they follow health, safety or hygiene directives
- Port and airport services
- Repair and maintenance of streets, roads and highways
- Roadside assistance and locksmiths - for emergencies only, and upon prior phone or email appointment
- Sale, installation and maintenance of infrastructure and equipment to address the hurricane season
- Sale, installation, repair and maintenance of renewable or alternative energy systems
- Service providers such as plumbers; electricians; household appliance technicians; extermination technicians; elevator technicians; pool technicians; gardening services; elevator repairmen and inspectors; security gate repairmen; and residential, commercial, industrial or public security and health services. The individuals providing such services must wear face masks and gloves. Gated communities must ensure these providers comply with this order.
- Services related to any federal agency, including the Department of Defense
- Supply and distribution of items related to exempted sectors
- Taxi and public cargo transportation services that comply with NTSP regulations

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- Telecommunication services - to repair, deliver, or replace equipment for landline, cellphone, internet, cable or antenna TV communication services. In accordance with guidance to be issued by the Puerto Rico Telecommunication Bureau, service providers may provide the services through regional strategic centers. All services must be previously scheduled by phone and be offered only to current customers. Only telecommunication service providers registered with the Puerto Rico Telecommunication Bureau may provide such services.
- Telephone or online sales - warehouses may operate but only if delivery is carried out through curbside pickup or delivery services to customer vehicles. Steps should be taken to serve one client at a time while complying with adequate safety measures. Stores should not be open to the public.
- Waste management services (private or public); recycling services; maintenance and cleaning services

Company Shareholder Meetings

Section 7 of EO 2020-038 authorizes the Board of Directors to notify shareholders of its decision to reschedule the date and/or place of previously notified shareholder meetings. These notices may be provided via email, press releases, radio announcements, newspaper ads, phone and/or a combination of said means. In the case of publicly traded companies, notice must be made by submitting a public notice with the Securities and Exchange Commission and publication of a press release that also must be posted on the company's website immediately afterwards.

The authority to notify changes to previously scheduled shareholder meetings shall last throughout the duration of the state of emergency.

Safety Measures to be Followed by the Public and Exempted Businesses

Section 8 of the EO 2020-038 orders all individuals to comply with the following safety measures when visiting any of the exempted businesses:

- Use face masks or similar articles of clothing (e.g., scarfs) that cover the area around the mouth and nose
- Maintain at least 6 feet apart from any other person
- Only one member of a household will be allowed to enter an establishment at a time (except when assisting others with a health or physical disability)

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In order to protect the health and safety of their employees and customers, private businesses must require their employees and customers to comply with the measures above. To this end, private businesses must:

- Ensure that each of their employees periodically washes their hands and disinfect their workstations
- Ensure customers wear a face mask, and refuse entry to any person who does not comply
- Provide stations or mechanisms in the business to allow all persons to disinfect their hands while remaining in the premises
- Ensure that customers keep at least 6 feet apart from each other while inside and outside of their premises

Also, if possible, businesses should offer preferential service to those persons who work in hospitals, clinical labs or public safety.

Excluded Persons (Section 10 of the Executive Order)

The following persons are exempted from the “Stay-in-Shelter” order established in this Executive Order:

- Autoexpreso staff to process road toll payments
- Call center and data center staff
- State Election Commission (“CEE” for its acronym in Spanish) staff designated as essential
- Citizens attending emergency or health situations
- Critical Executive, Legislative and Judicial employees
- Critical utility and infrastructure employees
- DACO inspectors
- Exempted service employees
- Federal or State public and private safety employees
- Healthcare professionals, including mental health professionals, and hospital, pharmacy, pharmaceutical, bioscience or health center employees
- Individuals diagnosed with autism are authorized to take therapeutic outings near their homes while accompanied by one person

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- Individuals who provide support, care, food or transportation to seniors, minors, dependents, persons with disabilities, or especially vulnerable persons
- Internal revenue agents at the Puerto Rico Department of the Treasury
- Legal representatives of citizens accused of crimes with a court appointment; bail reduction and habeas corpus
- Legal representatives scheduled to appear at civil court hearings
- Members of the press and media
- Members of the Vigilance Corps at the Puerto Rico Department of Natural Resources and the Environment
- Municipal police
- Notaries performing services authorized under the Puerto Rico Supreme Court's Resolution EM-2020-09
- Port and airport staff
- University lab researchers
- Wholesale food distribution and manufacturing employees, including agricultural activity

Payroll and Office Exceptions

Employers are authorized to send up to five (5) employees to their offices in order to process payroll payments due on May 2020.

This exemption will apply only on May 4 and 13, 2020, from 5:00 a.m. to 2:00 p.m. Employers using this exemption to perform services other than to process payroll payments will be fined in accordance with the provisions of EO 2020-038.

Likewise, on May 5, 2020, from 5:00 a.m. to 2:00 p.m., employers may send certain employees to their offices in order to retrieve materials and equipment needed to continue providing services remotely.

Road Tolls

Tolls will be collected on roads belonging to the Government of Puerto Rico. Also, Autoexpreso recharging lanes may open, provided safety and mitigation measures are adopted to safeguard the employee's health. However, no person shall be fined for crossing road tolls with an underfunded Autoexpreso account.

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Construction Services

Construction services may be carried out during the lockdown if they consist of maintenance or repairs to hospitals, potable water, electric power and communication. Starting on May 11, 2020, all other construction work may resume provided safety measures based on the CDC, US Dept. of Health, and the Occupational Safety and Health Administration (OSHA) guidelines are adopted to protect the health of construction workers. Before work resumes, all employees must be oriented and subject to continuous supervision on new workplace safety measures. Construction may be done for nonexempted businesses, including construction on marinas (related to hurricane preparedness work), natural disaster repairs and reconstruction, and private, residential or governmental construction.

Distribution and supply of construction materials is also authorized, including the distribution of cement and other related products.

Manufacturing

Starting on May 11, 2020, all other manufacturing activities may resume, provided safety measures based on the CDC, US Dept. of Health, and the Occupational Safety and Health Administration (OSHA) guidelines are adopted to protect the health of employees.

Before work resumes, all employees must be oriented and subject to continuous supervision on new workplace safety measures.

Distribution and supply of manufacturing materials is also authorized.

Recreational Maritime Traffic

EO 2020-038 orders the Puerto Rico Department of Natural and Environmental Resources to close every marina in Puerto Rico.

Mayors that supervise costal municipalities may refuse entry of maritime transportation in their shores.

Workplace Risk Management Plans (Section 18 of the Executive Order)

Before resuming operations, all exempted businesses must prepare an infection risk management plan based on **OSHA 3990 guidelines**. A self-certification form is available in PROSHA's website, and you can **access it here**. Each

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employer must fill out and file said form with the Department. The self-certification will be required before commencing operations.

Businesses that were operating pursuant to previous Executive Orders must comply with this requirement. Previously exempted businesses may continue operating before filing the self-certification, but must file said form as soon as possible.

Employers that operate under the parameters of this Executive Order may not fire, discipline or discriminate against an employee who exercises his rights under applicable labor legislation, including the recently enacted **Families First Coronavirus Response Act** and **Act 37-2020**, as well as for using available licenses, or for filing a complaint, testifying or attempting to testify in any related procedure.

Employers must protect employees that are especially vulnerable to COVID-19, taking this into account when deciding to reinstate them at the office.

It is important for employers to limit the number of employees in common areas during working hours areas (e.g., cafeterias, lunch rooms, terraces, etc.) encouraging the use face masks and compliance with social distancing norms.

Modifications

The Governor reserves the right to modify this Executive Order to address any change in the rate of infections that might result from the easing of restrictions introduced by EO 2020-038, allowing for more flexibility in case the rate decreases or more restrictions in the rate of infection increases.

Penalties for Failing to Comply with EO 2020-038

Any person who fails to comply with the provisions of EO 2020-038 may face up to six months of incarceration and/or a fine of up to \$5,000.

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