

Am I An Essential Employer/Employee?

The U.S. Department of Homeland Security has released a list of jobs/industries that are “essential critical infrastructure” for the COVID 19 pandemic, which includes agriculture. On March 22, Ohio Department of Health Director Dr. Amy Acton issued a “stay at home” order (“the Order”) requiring those people who are not in an industry or occupation deemed “essential” to remain at home. The Order uses a list of essential industries created specifically for Ohio and includes a list of industries and employees from the U.S. Department of Homeland Security. (Note there are two distinct lists.)

If you are an employee in the following ag and ag related industries, you are deemed to be an “essential” employee per the Order. This includes those employed in the supply chain for those listed essential industries and occupations.

Essential employers/occupations listed in the Order as applicable to agriculture and agriculturally related industries:

Food, beverage, and licensed marijuana production and agriculture:

Food and beverage manufacturing, production, processing, and cultivation, including pharmacy, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical marijuana use, medical marijuana dispensaries and licensed medical marijuana cultivation centers; and businesses that provide food, shelter, and other necessities of animals, including animal shelters, rescues, shelters, kennels and adoption facilities. (the Order at 12(c))

Stores that sell groceries and medicine:

Grocery stores, pharmacies, certified farmers’ markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits, meats, fish and poultry, prepared foods, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sells other non-grocery products, and products necessary to maintain the safety, sanitation, and essential operation of residences and essential businesses and operations. (the Order at 12(b))

Restaurants for consumption off-premises

Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry out, Schools and other entities that typically provide food services to students or members of the public may continue to do so under the condition that the food is provided to students or members of the public as a pick-up and take away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided or at any other gathering site. (the Order at 12(o))

Gas stations and businesses needed for transportation

Gas stations and auto supply, auto-repair, *farm equipment*, construction equipment, boat repair, and related facilities and bicycle shops and related facilities. (Emphasis added.) (the Order at 12(h))

Financial and insurance institutions

Bank, currency exchanges, consumer lenders, including but not limited, to pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures. (the Order at 12(i))

Manufacture, distribution, and supply chain for critical products and industries

Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, *agriculture, food and beverage*, transportation, energy, steel and steel products, *petroleum and fuel, mining*, construction, national defense, communications, as well as products used by other Essential Businesses and Operations. (Emphasis added.) (the Order at 12(v))

Supplies for Essential Businesses and Operations.

Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; *food, food additives, ingredients and components*; medical and orthopedic equipment; optics and photography equipment; diagnostics, *food and beverages*, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security. (Emphasis added.) (the Order at 12(q))

Mail, post, shipping, logistics, delivery, and pick-up services

Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, *food, alcoholic and non-alcoholic beverages*, goods, vehicles or services to end users or through commercial channels. (Emphasis added.) (the Order at 12(l))

See also Organizations that provide charitable and social services (the Order at 12(d)) (regarding businesses and food banks providing food to those in need); Critical trades (the Order at 12(k)) (regarding building and construction trades including exterminators); Hotels and motels (the Order at 12(x)) (regarding hotels and motels, to the extent used for lodging and delivery or carry-out food services); Personal services (the Order at 12(u)) (regarding professional services such as insurance services).

Essential employers/occupations are also listed by the U.S. Department of Homeland Security as applicable to agriculture and agriculturally related industries (and is incorporated in the Order):

FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing(packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood, slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and block chain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

You can access the Order and the incorporated U.S. Department of Homeland Security essential critical infrastructure list here, <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/public-health-orders/directors-order-to-stay-at-home>.

Companies that are deemed essential are required by the Order to abide by the following practices:

1. Designate six foot distances:
 - Designate by signage, tape, or by other means six foot spacing for employees and customers in lines to maintain appropriate distance
2. Hand sanitizer and sanitizing products:
 - Having hand sanitizer and sanitizing products readily available for employees and customers
3. Separate operating hours for vulnerable populations:
 - Implementing separate operating hours for elderly and vulnerable customers
4. Online and remote access:
 - Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

There is also a valuable checklist for employers in Section 18 of the Order, pages 8 and 9.

Employers and employees can also visit the Ohio Department of Health's Corona Virus Stay at Home Frequently Asked Questions <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/home/stay-at-home-information/stay-at-home-order-frequently-asked-questions>.