Recently I sent Robert Procter a list of all the outstanding professions that were sent to me or that I received directly from members.

That list included:

* Architects and designers
* Insulation (99% of their business is going in and removing insulation and putting in new insulation. They don’t really do new home construction or large remodels.  So they’re wondering if they’re considered essential)
* Window coverings (The business is Bed, Bath & Drapery.  They do blinds, window shades, window coverings, custom bedding, and other home furnishings (some lights)
* Window installation in an existing home
* Lawn mowing, lawn care, irrigation
* Garage door installation on an existing home
* Audio/video (Audio Video – is wondering about projects and what he should do. He knows part of his business is essential (health facilities or to get owners into a home), but doesn’t feel some of the projects are essential and doesn’t want to risk his employees health. He is torn as to how to handle the situation.

Robert was able to put together guidance for all of these remaining professions.  This response can likely be used for future questions as well in addition to the more specific Q and As that are currently posted on the WBA website.

There is additional guidance in this email as well related to multifamily and general HR questions.  The latest update on our efforts related to landscaping was sent to you yesterday in a separate email.

Please feel free to use this information to respond to any remaining member questions on these items.

If you get future emails on professions and how the order relates to them I would suggest sending the two Q and A items below on determining if they are essential and then the item on what can be done if they are non essential.

Alicia is putting this information together along with some additional items that will be sent to our entire membership list this afternoon so you can plan ahead and so we are not sending multiple emails to the same group.  Should we have any additional changes/additions they will be added to our email this afternoon.

Finally, with the passage of an additional stimulus package being passed federally there will likely be a number of questions coming in on those bills.  We will be leaning on NAHB for that analysis and will be posting that information to our website as it becomes available.

Please let me know if you have any questions and thank you for the efforts this week and the constant communications to get as much accurate information out to members as quickly as possible.

Brad

***Q: How do I know if I am “essential” under the Safer At Home Order?***

*A: The WBA has received a number of questions from members relating to whether their business is an Essential Business and Operation under the Safer At Home Order. Understandably, many business owners are having trouble understanding the Order, and how it applies to them. We will try to provide the steps in understanding how your business is treated under the Order.*

*The analysis has become further confused by statements made by a deputy to the Chief of Staff in the Governor’s office to the Milwaukee Journal Sentinel relating to essential work that are not consistent with the Order itself. We believe there may be further clarifications soon. If and when new clarifications come out, we will update you as soon as possible.*

*Under the Order all non-essential business and operations must cease, and all individuals are to stay at home or in their place of residence. People may leave their residences to operate “Essential Businesses and Operations.”  Do not be confused by the word “essential”. The work you do does not need to be “essential” for any particular purpose.  The Governor in his Order created the category of “Essential Businesses and Operations”.  It is a title for businesses that can continue to operate. If your business fits under this category, it can operate. There is no further analysis as to whether the work you do is essential for any particular purpose.*

*There are a number of areas where home construction and its related businesses are addressed that most likely apply to the WBA’s members. One easy place to look is in the list of Essential Businesses and Operations under section 13 of the Order. Under section 13, it includes:  “Hardware and supplies stores. Hardware stores and businesses that sell electrical, plumbing, heating, and construction material.” If your business fits under the definition of “hardware and supplies stores”, your business is an Essential Business and Operation that may continue to operate subject to the requirements that are imposed on Essential Businesses and Operations. There is no further analysis to determine whether what you do is “essential” to any particular project or thing.*

*Another provision under section 13 is the “critical trades”.  There is a laundry list of critical trades including “plumbers, electricians, carpenters, laborers, sheet metal, iron works, masonry, pipe trades, fabricators, finishers, exterminators, pesticide application, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, forestry and arborists. . .” If you are one of those listed trades you are an Essential Business and Operation, and you may continue to operate subject to the requirements imposed on Essential Businesses and Operations.  There is no further analysis to determine whether what you do is “essential” to any particular project or thing.*

*Under the critical trades there is one last catch-all provision that says “other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations.” This provision is a little trickier.  If you are not listed in the critical trades, you may still be considered a “critical trade” if you are “necessary” to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, Essential Governmental Functions, and Essential Businesses and Operations. For example, we believe that a company that does asbestos or lead paint removal would likely qualify because it is necessary to the safety, sanitation, and essential operation of residences. It also mostly likely provides those services to other Essential Businesses and Operations.*

*Finally, the one that we concentrated on the most in prior posts is the definition of Essential Infrastructure, which includes “housing construction, except that optional or aesthetic construction should be avoided.” Under the Order, businesses that are part of the Essential Infrastructure are Essential Businesses and Operations. This provision is the one that will allow most of the WBA builder members to operate even if they do not self-perform the work. Under the Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provide, operate, maintain, and repair Essential Infrastructure. This means that if you provide any service or perform any work necessary to offer, provide, operate, maintain, and repair “housing construction”, then you are Essential Infrastructure and an Essential Business and Operation; however, you should avoid optional or aesthetic construction.*

*Under the Order, businesses are supposed to self-determine whether they meet the criteria, which is difficult to do.  We can apply this to a few businesses, but please understand that the government may disagree with our analysis or may issue further clarifications that change the analysis.*

*·         Insulation Installers. Do insulation installer provide a service that is necessary to maintaining the safety, sanitation, and essential operation of a residence?  We believe the answer is most likely yes, and it would then qualify as an Essential Business and Operation as a critical trade.  Further, does an insulation installer “provide any service or perform any work necessary to . . . maintain, and repair housing construction”? We believe the answer is most likely yes, and it would qualify under the housing construction provision of Essential Infrastructure, which means it is an Essential Business and Operation.*

*·         Lawn mowing and lawn care. The Governor’s office already issued an answer that landscaping is not an essential businesses. When that answer was issued, we believe it was addressing lawn mowing and lawn care.*

*·         Window coverings. It is difficult to see how a company that just sells window coverings meets either the definition under “housing construction” or “critical trades.” We also think it would be difficult to claim that window coverings are construction materials. Accordingly, our best guess is that a window coverings store is not an Essential Business and Operation. However, this question raises an interesting point. We do believe that an Essential Business and Operation such as a hardware store that is properly open because it sells construction materials, but also carries window coverings, may continue to sell window coverings.*

*·         Garage Door Installers. A garage door installer may qualify as a Critical Trade as it is work that is necessary to maintaining the safety of a residence. It may also qualify under the housing construction provision because it provides work necessary to operate, maintain, and repair “housing construction”. In this case, optional or aesthetic work should be avoided.*

*·         Like the analysis for insulation installer, excavating, concrete, fencing, erosion control, grading, and similar businesses are also likely Essential Businesses under the Critical Trade and housing construction provisions.*

*Obviously, these are difficult times.  You should, above all else, use common sense when determining whether you meet the criteria of an Essential Business and Operation. If you have doubts, you should contact an attorney before taking actions that could be deemed a violation of the Order.*

*Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with*[*Social Distancing Requirements*](https://evers.wi.gov/Documents/COVID19/EMO12-SaferAtHome.pdf)*(see section 16) as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.*

*When taking any action permitted under the Order, all individuals, organizations, government bodies, and any other permitted group of individuals shall, to the extent possible, follow DHS guidelines located here: https:/ /*[*www.dhs.wisconsin.gov/ covid-19 / index.htm.*](http://www.dhs.wisconsin.gov/%20covid-19%20/%20index.htm.)

*All Essential Businesses and Operations shall comply with DHS guidelines for businesses located here:*[*https://www.dhs.wisconsin.gov/covid-19/employers.htm*](https://www.dhs.wisconsin.gov/covid-19/employers.htm)

***Q. My business is not an Essential Business and Operation, what can I do?***

*A. Non-essential business and operations must cease all activities at facilities within Wisconsin; However, non-essential businesses may continue operations consisting exclusively of employees or contractors performing activities at their home or residences (i.e., working from home). In addition, nonessential businesses and operations may continue Minimum Basic Operations.*

*Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:*

*·         The minimum 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, including where these functions are outsourced to other entities.*

*·         The minimum necessary activities to facilitate employees of the business being able to continue work remotely from their residences.*

***Also, this an additional guidance piece on multifamily****:*

*Q: Can a landlord show an apartment?*

*A: Landlord's under the order are specifically barred from entering leased apartments except for emergency maintenance.

Under the real estate services, they may be able to show vacant apartments subject to all the limitations on real estate services.*

***Also information on HR:***

*We have received numerous questions relating to employees.  Employment law is very complicated, and the WBA strongly advises you to contact an employment attorney. Most of the questions that have been received address whether an employer must pay an employee sick leaves that stays at home related to the COVID-19 virus.*

*The U.S. Department of Labor has provided guidance that may be helpful to you at:*[*https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave*](https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave)*relating to the Families First Coronavirus Response Act: Employer Paid Leave Requirements. The Act applies to private employers with fewer than 500 employees.*

*Some of the highlights of that guidance include (Please read the entire guidance document and not just the highlights below):*

*·         Covered employers must provide two weeks (up to 80 hours) of paid sick leave at the employer’s regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*

*·         Covered employers must provide two weeks (up to 80 hours) of paid sick leave at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.*

*·         Covered employers must provide to employees that it has employed for at least 30 days up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee’s regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*

*The U. S. Department of Labor has numerous fact sheets, Questions and Answers, and Posters at:*[*https://www.dol.gov/agencies/whd/pandemic*](https://www.dol.gov/agencies/whd/pandemic)

*Again, please consult with an attorney or human resources professional.*