



Janet T. Mills
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Regarding the recent Executive Order from Governor Mills, many questions have come forward regarding the continuation of work of Non-Essential staff / Non-Essential businesses.

To paraphrase a saying that Governor Mills has often said to reporters regarding her orders, “the order speaks for itself – the order is very clear.” Given this backdrop, and as it relates to staying home, a portion of the order very clearly states:

I. STAY AT HOME

A. ORDER All persons living in the State of Maine are hereby ordered, effective as of 12:01AM on April 2, 2020 to stay at their homes or places of residence ("homes") except:

1. To conduct or participate in Essential Activities (defined below);
2. Workers at Essential Businesses and Operations that are not required to close pursuant to Executive Orders 19 FY 19/20 may travel: a. between their Homes and those businesses and organizations; b. to and from child care; and c. to and from customers for the purpose of delivering goods or performing services; and

3. Workers of Non-Essential Businesses and Operations under Executive Orders 19 FY 19/20 may travel: a. between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and b. to and from customers for the purpose of delivering goods.

Part three of a portion of the Order noted above, clearly enables non-essential businesses to allow some staff (maintaining rigorous social distance as defined in prior orders) to come to work for the purpose of engaging in “Minimal Operations.” It’s logical that organizations may try to parse the term “minimal operations.” This term is not defined further in the order, and organizations should apply the best judgment as to what they define as “minimal,” and in doing so they are encouraged to consult with their governing boards/managers within their applicable governance structure (i.e. municipal, city, town, non-profit, etc.), and also consult with your governance board’s legal counsel, if able, to help guide what your organization defines as “minimal operations.” Already, we have seen different libraries weigh in as to how they define “minimal operations,” and we must all acknowledge that libraries may define that term differently based on their locality and governance. It stands to reason that, “minimal operations” would be defined using the most prudent terms to ensure the safety of the staff and to minimally operate the library, and most importantly all while ensuring measures that reflect all Executive Orders provided by Governor Mills relating to COVID-19.

Guidance from the Maine State Library:

Based on the Governor's exact order, libraries are able to allow staff to come to work as it relates to minimal operations, and any staff coming to work must maintain the strictest social distancing guidelines. We encourage that municipalities and nonprofit boards define the term minimal operations to be transparent with the library director and staff.

EXCEPTIONS:

If a library's local governing body, municipality, city, town, non-profit board, etc. has indicated that the library is not to be open; is not essential and is prohibiting staff from working; and/or has defined "minimal operations," in which only some staff can come to work, **that local guidance MUST take precedence.**

The Bottom Line:

While the Executive Order allows for an organization to allow staff to come to work for minimal operations, the State of Maine's home rule authority may in fact prohibit the library being open to staff, and/or only allowing certain staff to come to work.