# May 2020 – Printer Friendly

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## *State by State Look at the Road to Re-opening*

As the COVID-19 crisis spread across the country in March and April, each state adopted their own protocols and requirements for dealing with the situation. While hardware stores were deemed essential and remained open, the ripple effect of the COVID-19 crisis and each state's response to it, impacted all businesses. Whether a business was allowed to stay open or forced to close, the response to this crisis will be felt throughout the economy for years to come.

Now, as restrictions slowly begin to ease in most areas, we wanted to provide our members with an update on how each of the five midwestern states in MHA's membership territory has dealt with the challenges presented by the crisis, and where each state is at today.

Illinois still has a full-blown Stay At Home order in place through the end of May. There, workers and customers are required to wear a facial covering when physical distancing can't be followed. Reduced occupancy limits are mandated for retail stores. South Dakota has few, if any, real mandates. North Dakota and Minnesota appear to be following gradual re-opening plans allowing for greater easing of business restrictions as each week passes. Finally, Wisconsin went from a Safer At Home lockdown to open with little or no restrictions, all in a matter of seconds once the State's Supreme Court issued a ruling last week.

Below is the latest information from each state on their path to re-opening.

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## *Illinois Governor Changes Mind on Emergency Rule Aimed At Punishing Businesses*

Last week, Illinois Governor JB Pritzker appeared as though he was going to try and follow through on his threat to punish businesses for violating his current Stay-At-Home Executive Order

Late on Friday, May 15, the governor directed the Illinois Department of Public Health to file an emergency rule that punishes a business owner with a Class A Misdemeanor for operating in violation of the Governor's Executive Order. A Class A Misdemeanor is punishable with up to 364 days in jail and/or a fine of up to $2,500.

On Wednesday of this week, Pritzker abruptly called on the same agency to **repeal** the emergency rule. Pritzker said his administration withdrew the rule "in order to pursue legislation with the same intended mechanism in a phased manner in line with the Restore Illinois plan."

"Enacting this measure through legislation will allow us to have these tools throughout the Restore Illinois plan versus an emergency rule that would be withdrawn and rewritten at the start of phase three and then phase four," Pritzker said during his daily coronavirus press briefing.

Still, he defended the rule, saying it "brought Illinois in line" with a national practice and gave local officials "more flexibility in their ability to enforce this order with a citation."

"Nobody is sending police forces in to break up activity across the state," Pritzker said during his briefing. "What we are doing is enforcing using lots of different methods, enforcing using our licensing capability and our ability to pull licenses from businesses."

Illinois' current Stay-At-Home order lasts through the end of May. Since the order was last extended, Pritzker has created four regions in the state which may each move through the five stages of re-opening independent of one another. The five stages of re-opening are:

- Phase 1: Rapid Spread
- Phase 2: Flattening
- Phase 3: Recovery
- Phase 4: Revitalization
- Phase 5: Restoration

## *Wisconsin Re-opens As Supreme Court Invalidates State's "Safer-At-Home" Order*

On May 13, 2020, the Wisconsin Supreme Court declared the state's Safer-at-Home order unlawful, invalid, and unenforceable. When the ruling was first announced. businesses faced some uncertainty as to how to operate. However, it now appears there are no statewide requirements governing their operations.

By a 4-3 decision the court limited Evers's ability to make statewide rules during emergencies such as a global pandemic, instead requiring him to work with the state legislature on how the state should handle the outbreak.

The justices wrote that the court was not challenging the governor's power to declare emergencies, "but in the case of a pandemic, which lasts month after month, the Governor cannot rely on emergency powers indefinitely."

Notably, the court allowed Emergency Order #28 to remain valid as to school closings for the 2019-2020 school year, which means that while businesses may open, schools remain closed.

As of a few days ago, neither the governor nor the legislature had yet to offer replacement guidance on COVID-19 suppression measures. Many businesses have voluntarily adopted standards which require social distancing or call for face coverings. However, there are no statewide requirement to do so. Each business is left to determine for themselves what measures, if any, they wish to put in place.

Immediately following the ruling, a few Wisconsin counties and municipalities instituted their own orders. However, most of those have since been lifted or have expired, including those effecting most of the Milwaukee suburbs. Notably, Dane County and the City of Milwaukee continue to have versions of a safer-at-home order still in place.

## *Gradual Re-opening of Many Businesses Continues in Minnesota*

On Monday, May 18, Minnesota's "Stay At Home" order expired. It was replaced by the "Stay Safe Minnesota" guidelines, which allowed for the re-opening of most Minnesota retail businesses so long as they had a COVID-19 preparedness plan and limited capacity to 50% or less of allowable occupancy. While many retailers did re-open, most took a cautious approach.

While many Minnesota retailers were able to re-open, personal service establishments (barbershops, hair salons, tattoos, etc.), fitness centers, and entertainment centers remained closed. Restaurants and bars remain limited to delivery and take-out.

Yesterday, Governor Tim Walz announced restaurants and bars will be able to open for outdoor seating only on June 1.

- There can be no more than 4 people at a table or 6 from the same family
- Tables must be 6 feet apart following social distancing guidelines
- Reservations will be required; no walk-ins allowed
- Masks will also be required for employees and strongly encouraged for patrons
- Restaurant can have 50 people maximum at one time in outdoor seating
- Restaurants are encouraged to check with local government and be creative in making outdoor space available
- Take-out and delivery options remain

Personal care settings such as salons and barber shops can also re-open on June 1 but cannot exceed more than 25% occupancy at a time.

- 25% occupancy is based on the fire code/occupancy permit
- Masks are required for both employees and patrons in these settings
- Appointments only; no walk-ins allowed,

Places of worship may re-open on June 1 but are required to limit gatherings to 10 people or less.

Campgrounds can open on June 1 with social distancing measures.

Individual youth sports and sports that are able to be played with under 10 people are allowed. Sports games not allowed at this time. Daytime summer camps are allowed; overnight summer camps are not allowed at this time.

## *North Dakota Now Following Smart Restart Plan*

For the most part, the majority of North Dakota's economy has remained open during the COVID-19 crisis. Most retail stores were allowed to remain open. In March eating and drinking establishments, as well as recreation and entertainment businesses, were forced to close on-site services. Personal service businesses such as beauty salons, tattoo and body art shops were also forced to close entirely.

On May 1, most businesses who had been shut down were allowed to reopen following the operating protocols developed under the state's Smart Restart Plan. Under the plan, operating protocols are tied to an assessment of the risk level in each county. For example, businesses operating in a county deemed at critical risk could be asked to shutdown with only essential services staying open and employers exercising extreme caution. At the same time, businesses operating in a "new normal" county (the lowest of the risk levels) may operate with no restrictions, so long as stricter hygiene and cleaning regimens are adhered to with staff and customer safety being monitored.

While most businesses are open, physical distancing and occupancy limits remain in place for bars and restaurants. Standing in bars is not allowed. Bar stool seating is allowed for 1 - 2 guests only, with at least 6 feet of separation between all groups.

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## *South Dakota Businesses Following State’s Back To Normal Plan*

One of the least restrictive states during the health emergency has been South Dakota. The state never issued a stay at home or shelter in place order.

Most businesses in the state of South Dakota are able to remain open and operate following guidelines found in the state's "Back To Normal" Plan, which is basic and easy to understand.

Under the plan, employers are directed to:

- Encourage good hygiene and sanitation practices, especially in high-traffic areas.
- Encourage employees to stay at home when sick.
- If previously operating via telework, begin transitioning employees back to the workplace.

- Where appropriate, screen employees for symptoms prior to entering the workplace.

Additional directions apply to indoor restaurants, bars, breweries, cafes, coffee shops, recreational or athletic facilities, health clubs or entertainment venues. They include:

- Resume operations in a manner that allows for reasonable physical distancing, good hygiene and appropriate sanitation.
- Consider restricting occupancy and continue innovating in this uncertain environment.

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## *SBA Releases PPP Loan Forgiveness Application*

*From CLA*

On May 15, guidance was released in the form of a **forgiveness application**. While it doesn’t answer every question, it does address some big concerns and paints a clearer picture of the SBA’s direction. Overall, the guidance seems reasonable. Most organizations should be able to include a full eight weeks’ worth of payroll and nonpayroll costs. Below is a rundown of what we feel is helpful, and other items that are not as helpful, for businesses seeking loan forgiveness.

### Helpful

- **Flexibility to include eight weeks of payroll** — You can include payroll costs for the last pay period of the covered period, if those costs are paid on or before the next regular payroll date.

- **Flexibility to include eight weeks of nonpayroll costs** — You can include nonpayroll costs that you either; (a) paid during the covered period, or; (b) incurred during the covered period and paid on or before the next regular billing date. nonpayroll

- **Flexibility to align with normal pay cycles** — You can shift the eight weeks for payroll costs to line up with regular pay cycles. This adds an optional alternative payroll covered period for weekly and biweekly borrowers, which makes tracking easier. Note that this doesn't shift the eight-week covered period for nonpayroll costs.

- **Simplified FTE calculation method** — You can make counting easier by electing a simplified FTE calculation method. Under the simplified method, employees working at least 40 hours per week count as 1.0 and employees working fewer than 40 hours per week count as 0.5.

- **FTEs based on 40-hour workweek** — The SBA application settled on a 40-hour workweek, which is in line with how employers generally define a FTE. This might help some borrowers and hurt others, but because it impacts both the numerator and denominator of a ratio in the forgiveness application, much of the impact is offset.

## Not As Helpful

- **Lack of consistency** — The wording of several items in the forgiveness application appears to differ significantly from wording in the CARES Act itself. Those differences create some concerns about the intended meaning of certain provisions in the application.

- **Certain payroll costs still excluded** — The new loan forgiveness guidance permits borrowers to request forgiveness of payroll costs incurred in the covered period but paid after, but only if those costs are "paid on or before the next regular payroll date." Many borrowers are incurring payroll costs now that won't be paid by the deadline for inclusion in forgiveness. Examples include retirement contributions made annually and employee commissions with holdbacks.

- **Less flexibility for rehires** — Although a reduction in FTE employees during the covered period will generally cause a corresponding reduction in the amount of PPP loan forgiveness that a borrower may receive, Section 1106 of the CARES Act allows an exemption for borrowers if employees terminated between February 15 and April 26 are rehired by June 30. We had hoped for flexibility if some, but not all, FTEs were rehired. However, the application makes clear that borrowers must rehire enough FTEs by June 30 to match their February 15 level, in order to qualify for the exemption under Section 1106.

- **Treatment of interest on certain debt obligations is still unclear** — Section 1106 of the CARES Act provides that interest on "covered mortgage obligations" (defined to include mortgages on "real or personal property") can be included in the forgiveness application, but it is unclear whether borrowers can also include interest on other debt obligations. Although "interest on any other debt obligations that were incurred before the covered period" is expressly included in the list of allowable uses of PPP funds that is contained in Section 1102 of the Act, that same wording does not appear in the list of costs eligible for forgiveness in Section 1106 or anywhere in the forgiveness application. Accordingly, many people believe Section 1106 only applies to mortgages on real property and incidental "personal property" covered by the mortgage. However, we have heard some advisors suggest that Congress intended to include other debt obligations in Section 1106.

- **Self-employed individuals** — The **Interim Final Rule** released on April 14 limits forgiveness for self-employed individuals to eight weeks' worth of 2019 net profit. As a result, self-employed individuals would not get forgiveness of any payroll costs for employees or any nonpayroll costs.

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**SERVICE SPOTLIGHT**

## Bankcard Processing Service

The Midwest Hardware Association has over 300 businesses using our Bankcard Processing program. We process Visa, MasterCard, Discover, and American Express with the fastest possible turnaround time for payment of your funds.

With so many bankcard processors constantly after your business, why do dealers choose to process their credit and debit cards through the MHA? Here are just a few reasons:

- We understand the hardware business and the type of bankcard transactions that you accept. We price our service accordingly, thereby minimizing your costs.
- We have a dedicated staff with over 40 years of experience in processing bankcards for stores just like yours. You will have a specific contact person servicing your account. With other processors, you will most likely end up with an unfamiliar, different person every time you call.
- On a daily basis, your bankcard sales dollars are deposited straight into your bank account and become available for you to use, rather than being posted to your wholesaler's billing statement as a credit towards future purchases.
- Without ongoing PCI compliance, your processing costs and risk go up. As a participating MHA member on our bankcard service, we will assist you in validating your annual PCI compliance. Most other bankcard processors do not provide this service.
- You can trust us. As your trade association, we owe it to you, our member, to fairly evaluate our bankcard program against competitors and honestly inform you of the best fit for your store.
- Our agreement does not have any termination fees or minimum requirements for the length of time that you must remain on the program.

As a member-driven organization, the Midwest Hardware Association is in business to help you become as successful as possible. Our bankcard program sets itself apart from other processors by merging together the best service with the lowest possible cost.

**Testimonial**

*"Bankcard has grown so much over the past years that managing it has become a very important part of my business. I trust MHA and I am comfortable. I don't want to change to anyone else."*

**Wayne Cole**
*Cole Hardware Hank*
Grand Rapids, MN

*For more information about the MHA Bankcard Processing program, please contact Mac Hardin by phone at 1-800-999-4399 or by email at mach@midwesthardware.com.*

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## *Sales Trends (March 2020)*

Here are the most recent Illinois, Minnesota-Dakotas, and Wisconsin hardware store sales trends, gathered from association members using the MHA's monthly accounting service. The figures derived for each region includes sales data from the following number of stores:

**Illinois - 21 stores**
**Minnesota-Dakotas - 10 stores**
**Wisconsin – 76 stores**

| | Month | YTD |
|---|---|---|
| Illinois | 2.14% | -7.99% |
| MN-Dakotas | 9.33% | -0.83% |
| Wisconsin | 8.78% | -3.19% |