

Manitoba Government Declares a State of Emergency: What Does That Mean? (April 1)

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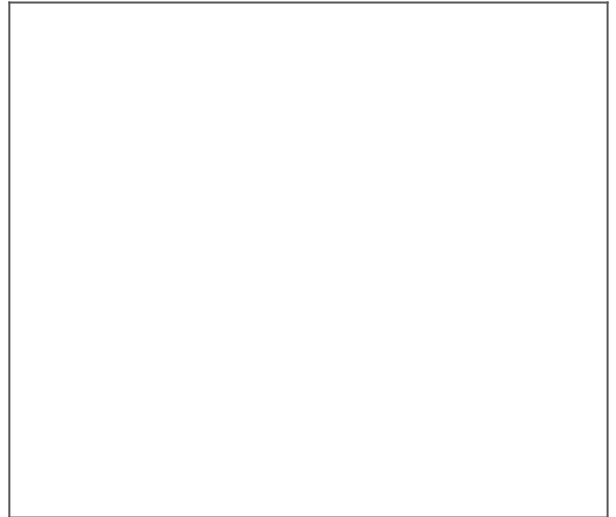
UPDATE: Manitoba Government Issues a New Public Health Order Restricting Non-Critical Businesses

On March 30, 2020, ten days after the Province of Manitoba declared a state of emergency under *The Emergency Measures Act* and the chief provincial public health officer first issued a number of public health emergency orders in accordance with *The Public Health Act* (the “PHA”), the Province of Manitoba issued the following additional PHA orders, effective April 1st:

1. Public gatherings are limited to no more than 10 people at any indoor or outdoor place or premises, including places of worship. Facility where health care or social services are provided including child-care centres and homeless shelters are excluded from this restriction.
2. Restaurants that serve food are prohibited from providing eat-in food service to customers. Delivery and take-out food service is permitted.
3. All non-critical businesses operating in Manitoba must close between April 1 and April 14. A list of critical businesses can be found [here](#).

Non-critical businesses may continue to operate on a remote basis and a business may accept orders on the Internet, or over the phone for delivery or pickup, as long as the employees are not working at the place of business.

The March 30th PHA order does not prevent employees or others from coming into a non-critical place of business to perform repairs, to provide security services or to take out items from the business premises if the business is



going to operate on a remote basis. The PHA order does not restrict the activities of a publicly funded agency or organization that delivers or supports government operations or services including health-care services, such as hospitals.

Businesses that are listed in the schedule of critical services that continue to operate must put in place measures to ensure that appropriate social distancing rules are followed by members of the public attending the place of business. These measures may include limiting the number of customers allowed entrance to the business at any one time, or putting up signage indicating an appropriate amount of space to leave between customers in a line.

Municipal transit services, taxis and other private vehicles for hire can continue to operate. The operator of the vehicle must take measures to ensure there is a reasonable separation of people in a vehicle. This order does not contain specific distance restrictions because it is hard to impose a limit in small vehicles. The goal is to ensure a reasonable level of spacing between people.

In response to the COVID-19 pandemic, the Province of Manitoba announced a state of emergency under *The Emergency Measures Act* (the “EMA”) on March 20, 2020. The declaration of a state of emergency will enable the government of Manitoba to take far-reaching measures in order to protect public health. In addition to the EMA declaration, the chief provincial public health officer has issued a number of public health emergency orders in accordance with *The Public Health Act* (the “PHA”).

When can a state of emergency be declared in Manitoba?

Section 10(1) of the EMA states that in the event of a “major emergency” or “disaster”, the government of Manitoba may declare a state of emergency in respect to all or any part of the province.

Prior to making such a declaration, the government must be satisfied that there is in Manitoba (a) a “disaster”, and/or (b) an “emergency” that is not a “routine emergency”. The EMA defines “disaster” as a calamity, however caused, which has resulted in or may result in, among other things, the loss of life, or serious harm or damage to the safety, health or welfare of people. The EMA defines “emergency” as a present or imminent situation or condition that requires prompt action to prevent or limit (a) the loss of life, or (b) harm or damage to the safety, health or welfare of people, or (c) damage to property or the environment.

A “routine emergency” that would not justify a declaration such as the one made by the government of Manitoba is defined as any emergency that (a) can be effectively resolved by local police, fire and emergency medical services without requiring additional resources from the Province of Manitoba, (b) does not require evacuation of persons out of the geographic area over which a local authority in Manitoba has jurisdiction, and (c) does not require the declaration of a state of emergency. While it may be too early to know if the COVID-19 pandemic meets the technical definition of “major emergency” under

Manitoba law as there is no evidence that evacuations of persons out of specific geographic areas within the province are or will become necessary, the broader definition of disaster may have been relied upon by the government of Manitoba in issuing the March 20th declaration.

Under the EMA, a declaration of a state of emergency is valid for a period of 30 days, subject to renewal, if necessary, by cabinet.

What powers does the government of Manitoba have during a state of emergency?

Once declared, and during a state of emergency, for the purpose of preventing or limiting the loss of life, the government of Manitoba may:

1. acquire or use any real or personal property located in the province, including privately-owned property, considered necessary by the government to combat or alleviate the effects of the emergency;
2. regulate the distribution and availability of essential goods, services and resources;
3. control, limit or prohibit travel to or from any area or on any road, street or highway;
4. order evacuations of buildings or areas;
5. authorize the entry into any building or on any land without warrant; and
6. authorize or require qualified persons, such as medical professionals, to render aid of such type as that person may be qualified to provide.

Manitobans and business owners in the province should be aware that under the EMA,

a person who suffers any loss of any real or personal property because of any action described above shall be compensated in accordance with guidelines approved by the cabinet from time to time.

A person who contravenes an order issued under the EMA or interferes with actions taken in furtherance of such an order may be imprisoned for up to one year and/or fined up to \$10,000, increasing to \$50,000 if the contravention is a refusal to follow an evacuation order.

To date, the government of Manitoba does not appear to have exercised its authority under the EMA in order to combat the spread of COVID-19. Rather, at this stage, the government appears to be relying on orders issued by the chief provincial public health officer under Part 6 of the PHA.

What powers does the chief provincial public health officer have under The Public Health Act?

Section 67(2) of the PHA states that the chief provincial public health officer, with prior approval from the minister of health, may order a public place or premises to be closed, or order persons not to assemble in a public gathering. As authorized by the PHA, the chief provincial public health officer has put in place measures:

1. Limiting public gatherings of more than 50 people at any indoor or outdoor place or premises, including places of worship, gatherings and family events such as weddings and funerals. This measure does not apply to a

facility where health care or social services are provided and retail businesses including grocery or food stores, shopping centres, pharmacies or gas stations must ensure separation of one to two metres between patrons assembling in the business.

2. Limiting hospitality premises where food or alcohol is served or any theatres offering live performances of music, dance and other art forms as movie theatres to 50 people or 50 per cent of the capacity of the premises, whichever is lesser. These establishments must be able to ensure a social distance of one to two metres between customers.
3. Immediate closures of all bingo and gaming events.
4. Immediate closure of all wellness centres offering physical activities, gyms, fitness centres and athletic clubs and training facilities.

Generally, a person who contravenes orders made pursuant to the PHA may be imprisoned for up to six months and/or fined up to \$50,000. In certain circumstances, the penalties may increase to one year imprisonment and/or a fine up to \$100,000. Generally, penalties for corporations that contravene PHA orders may be fined up to \$500,000 and in limited circumstances, up to \$1,000,000.

Limited legislative oversight on powers during a state of emergency

Unlike the *Emergencies Act* (Canada) and similar emergency powers legislation in some provinces, a declaration by the government of Manitoba under the EMA and measures taken

by the chief provincial public health officer do not require prior approval or confirmatory consent from the legislative assembly. By contrast, under the *Emergencies Act*, the House of Commons and Senate must be allowed to debate and vote on a state of emergency proclamation within 7 sitting days of an emergency declaration by the federal cabinet. Accordingly, in Manitoba, once a state of emergency has been declared, decisions about the duration of the emergency period and the actions then taken rest solely with the provincial cabinet, subject only to judicial review by court challenge on the basis that the provincial cabinet has not complied with the legislation as written or that certain actions taken by the government of Manitoba violate or are inconsistent with the Constitution.

Summary

By declaring a state of emergency as permitted by the EMA on March 20, 2020, Premier Brian Pallister has significantly increased the power and authority his government has to take action in order to protect public health during the COVID-19 pandemic. However, at least initially, it appears that the government of Manitoba is satisfied that more limited measures taken by order of the chief provincial public health officer, as permitted by the PHA, are sufficient. As the COVID-19 pandemic evolves, the government of Manitoba may deem it necessary to take additional action.

Businesses and individuals in Manitoba that may be affected should contact TDS for updates on additional measures taken by the government of Manitoba under the EMA or

PHA.

UPDATE (March 31): Manitoba Government Issues a New Public Health Order Restricting Non-Critical Businesses

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The March 30th PHA order does not prevent

employees or others from coming into a non-critical place of business to perform repairs, to provide security services or to take out items from the business premises if the business is going to operate on a remote basis. The PHA order does not restrict the activities of a publicly funded agency or organization that delivers or supports government operations or services including health-care services, such as hospitals.

Businesses that are listed in the schedule of critical services that continue to operate must put in place measures to ensure that appropriate social distancing rules are followed by members of the public attending the place of business. These measures may include limiting the number of customers allowed entrance to the business at any one time, or putting up signage indicating an appropriate amount of space to leave between customers in a line.

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The March 30th PHA orders include a number of industry-specific exceptions and rules.

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