

LITIGATION, DISPUTE RESOLUTION AND INVESTIGATIONS  
CORPORATE AND M&A  
EMPLOYMENT

## COVID-19: Level 5 - Key Issues for Retailers

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Ireland is now at Level 5, the highest level of the Government's Resilience and Recovery 2020-2021: Plan for Living with COVID-19.

Once again, retailers across the country are getting to grips with the latest emergency measures to curtail the spread of COVID-19 and the kind of trading that is and is not permitted under Level 5.

[New Regulations](#) have been introduced making it an offence for people to leave their homes without reasonable excuse. The Regulations set out a non-exhaustive list of what might be a "reasonable excuse", and this list includes:

- leaving your home to go to an essential retail outlet for the purpose of obtaining items or accessing services for yourself, someone else who lives with you or for a vulnerable person; and
- leaving your home to travel to work in an essential retail outlet.

### WHAT IS "ESSENTIAL" RETAIL THAT CAN REMAIN OPEN?

There are 16 categories of "essential retail outlets" that are permitted to remain open.

If your business falls within one of the categories on this list, you may keep your premises open to the public, to the extent set out in the Regulations. Any business that remains open must continue to comply with all Government and public health guidance, including in relation to the implementation of physical distancing measures and the wearing of face-coverings.

If your business does not fall within the permitted categories of essential retail outlets, it should, by now, have closed to the public. It is an offence for the controller/occupier/manager/person in charge of a non-essential retail outlet to allow workers or members of the public access to that premises. A person found

guilty of this offence may be liable to a fine of up to €2,500 or to 6 months imprisonment or both. However, it is still possible for non-essential retail outlets to operate online sales or a 'click and collect' service or other remote system of ordering goods ([see below](#)).

### WHAT ARE THE RULES FOR RETAILERS WITH A MIXED RETAIL OFFERING?

This is an area that is causing much uncertainty amongst retailers in implementing the rules and it remains to be seen to what extent the rules around mixed retail will be enforced.

Under the Regulations, it is an offence for the controller/occupier/manager/person in charge of an essential retail outlet to allow members of the public access to part of the premises that is not operating solely as an essential retail outlet. A person found guilty of this offence may be liable to a fine of up to €2,500 or to 6 months imprisonment or both.

[Government guidance](#) indicates that retailers with a mixed retail offering which have discrete spaces for "essential" and "non-essential" retail should make arrangements for the separation of relevant areas. This means that in the case of a retail outlet selling, for example, both food (essential) and clothing (non-essential), arrangements should be made to prevent the public from accessing the clothing section of the outlet. Retailers with a mixed retail offering will therefore need to consider whether and how they

can reconfigure their store layout to separate the essential from the non-essential and to allow access only to essential items.

However, while retailers with a mixed retail offering may not be able to offer all their goods for sale on their premises, the option to sell online and to offer a 'click and collect' service or other remote system of ordering goods remains available ([see below](#)).

### CAN RETAILERS CONTINUE TO SELL ONLINE?

Yes, all retailers, including those deemed non-essential, may offer online sales or a 'click-and-collect' service or other remote systems of ordering goods for collection at a retail outlet. Delivery of online or remote orders via courier or postal services is also permitted. Indeed, the Department of Business, Enterprise and Innovation has encouraged all retailers to "adopt remote ordering systems, such as click and deliver, click and collect, or to take phone orders where possible".

Retailers will need to carefully manage the operation and implementation of online or remote sales to ensure that they are carried out in accordance with the Regulations and public health guidance on physical-distancing, particularly in the context of 'click and collect' or similar services from a retail outlet.

**WHAT MEASURES SHOULD RETAILERS TAKE TO PROTECT EMPLOYEES?**

Employers have general duties to take steps and implement measures to safeguard the safety, health and welfare at work of employees and others at a workplace, as far as reasonably practicable, under the Safety, Health and Welfare at Work Act 2005. These obligations are in addition to common law duties of care.

Exposure to COVID-19 presents an additional health risk to employees and other persons at a workplace and

employers are required to take additional measures to safeguard its employees and others in order to discharge their duties under the 2005 Act. The [COVID-19 Return to Work Safely Protocol](#), which retailers will by now be very familiar with, sets out the additional measures that employers should take in this regard. Central to the Protocol is an obligation to respond and adapt processes quickly where gaps arise. Retailers are therefore advised to frequently review the health and safety measures in place in their workplace, and in particular to address any concerns raised by employees.

Retailers should be mindful that there are protections in place for employees that raise concerns about health and safety in the workplace. Our briefing sets out these protections in detail [here](#).

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

**ESSENTIAL RETAIL OUTLETS**

- Outlets selling food or beverages on a takeaway basis, or newspapers, in non-specialised or specialised stores, on a retail/wholesale basis;
- Markets that wholly or principally offer food for sale;
- Outlets selling products necessary for the essential upkeep and functioning of residences & businesses, on a retail/wholesale basis;
- Pharmacies, chemists & retailers or wholesalers providing pharmaceuticals or pharmaceutical or dispensing services, on a retail/wholesale basis;
- Outlets selling health, medical or orthopaedic goods in a specialised outlet, on a retail/wholesale basis;
- Fuel service stations & heating fuel providers;
- Outlets selling essential items for the health & welfare of animals, including animal feed & veterinary medicinal products, pet food, animal bedding & animal supplies, on a retail/wholesale basis;
- Laundries & drycleaners;
- Banks, post offices & credit unions;
- Outlets selling safety supplies (including work-wear apparel, footwear & PPE), on a retail/wholesale basis;
- Hardware outlets, builders' merchants & outlets that provide, on a retail/wholesale sale basis, hardware products necessary for home & business maintenance or construction & development; sanitation & farm equipment; or supplies & tools essential for farming or agriculture purposes;
- Outlets providing for the repair & maintenance of mechanically propelled vehicles or bicycles & any related facilities (including tyre sales and repairs);

- Any other retail outlet that operates an online or other remote system of ordering goods for purposes of collection at the retail outlet;
- Outlets selling food or beverages, on a retail/wholesale basis, in a non-specialised or specialised outlet, insofar as they sell food or beverages on a takeaway basis or for consumption off the premises; insofar as they are staff canteens operating for the exclusive use of persons working on or at a particular premises; or hotels or similar accommodation services insofar as they sell food or beverages for consumption on the premises in accordance with the Regulations;
- Optician & optometrist outlets.

**The following are "essential retail" insofar as they offer services on an emergency basis only:**

- Outlets providing hearing test services or selling hearing aids and appliances;
- Outlets selling office products & services for businesses or for relevant persons working from their homes, whether on a retail or wholesale basis;
- Outlets providing electrical, information & communications technology & telephone sales, repair & maintenance services for places of residence & businesses.

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