

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

COVID-19: Level 5 - Key Issues for Retailers

January 2021

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

Under the latest [Level 5 Regulations](#) it is 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:

- going 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
- working in an essential retail outlet.

WHAT IS "ESSENTIAL" RETAIL THAT CAN REMAIN OPEN?

There are certain 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 be 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 deliver' service only. As of 8 January, it is no longer possible to operate a 'click and collect' service. Retailers may, however, honour 'click and collect' orders placed before 8 January. **(see below).**

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

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](#) issued in October 2020 when the country previously

entered Level 5, states 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.

CAN RETAILERS CONTINUE TO SELL ONLINE?

Yes, all retailers, including those deemed non-essential, may offer online or telephone sales for delivery. Delivery of online or remote orders via courier or postal services is also permitted.

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.

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 [Work Safely Protocol](#) (November 2020), which was a revision of the Return to Work Safely Protocol (May 2020), 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. Our briefing on the Work Safely Protocol is available [here](#).

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](#).

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 delivery;
- 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;
- Outlets providing hearing test services or selling hearing aids and appliances.

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

- 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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