

ALERT

DHS Issues a Second Update to Its Guidance on Essential Critical Operations and Workers During COVID-19

April 21, 2020

On April 17, 2020, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) issued the latest update, Version 3.0, to its "Essential Critical Infrastructure Workforce" guidelines, intended to help state, tribal, and other local officials decide what workers may need to continue to operate when coronavirus-related (COVID-19) "lockdown" or "stay at home" orders are in place. We covered the scope of this guidance in an earlier Client Alert on Version 2.0 and post on the original guidance issued on March 19, 2020.

The new guidance provides numerous additions and changes to Version 2.0. For example, throughout the document, CISA changed language referring to "employees" to "workers," and clarified it is intended to apply to both employees and contractors that perform duties deemed to be essential. Other changes, per sector, include:

Considerations for Government and Business

- **Employers must comply with OSHA requirements.** CISA added that employers must comply with applicable Occupational Safety and Health Administration (OSHA) requirements for protecting critical infrastructure workers during the COVID-19 pandemic.
- **Personal protective equipment.** CISA added the recommendation that critical infrastructure employers consider how best to implement the Centers for Disease Control and Prevention (CDC) recommendation to wear masks. For example, CISA notes that employers may provide disposable

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facemasks such as surgical masks instead of cloth face coverings depending on their particular circumstances.

- **Sick leave.** Employers should consider that sick leave policies may contribute to employees' decisions to delay reporting medical symptoms. In addition, sick employees should not return to work until they meet the home isolation criteria.
- **Reintegration of exposed workers.** Employers have the obligation to protect others by limiting to the extent possible the reintegration of workers who have been exposed to COVID-19 but remain asymptomatic.
- **IT workers.** CISA clarified that information technology (IT) and operational technology (OT) workers for critical infrastructure operations are essential.
- **Essential worker access.** The guidance now makes clear that "essential critical infrastructure workers need continued and unimpeded access to sites, facilities, and equipment within quarantine zones, containment areas, or other areas where access or movement is limited," and they "should be exempted from curfews, shelter-in-place orders, and transportation restrictions or restrictions on movement."

Healthcare/Public Health

- **Healthcare vendors and suppliers.** The CISA guidelines now include a much longer list of workers that are "required for effective clinical, command, infrastructure, support service, administrative, security, and intelligence operations across the direct patient care and full healthcare and public health spectrum." This includes healthcare vendors and suppliers. Pharmacy staff, blood donors and related organizations, and public health workers are also listed.

Food and Agriculture (Including Wood Products)

- **Fiber and forest products.** CISA clarified that essential workers who support sawmills and the manufacture and distribution of fiber and forest products include those involved in the manufacture and distribution of products using agricultural commodities.

Electricity Industry

- **Construction, utility telecommunications, and electric industry workers.** The CISA guidance on essential workers now specifically includes construction workers as well as utility telecommunications, and "[w]orkers in the electricity industry including but not limited to those supporting safety, construction, manufacturing, transportation, permitting, operation/maintenance, engineering, physical and cyber security, monitoring, and logistics."

Petroleum Industry

- **Manufacturing and distribution.** The CISA guidance now specifically includes "[m]anufacturing and distribution of equipment, supplies, and parts necessary for production, maintenance, restoration, and

service of petroleum and petroleum product operations and use, including end-users.”

Communications and Information Technology

- **Workers supporting persons with disabilities.** The CISA guidance adds “workers responsible for ensuring that persons with disabilities have access to and the benefits of various communications platforms, including those involved in the provision of telecommunication relay services, closed captioning of broadcast television for the deaf, video relay services for deaf citizens who prefer communication via American Sign Language over text, and audio-description for television programming.”

Critical Manufacturing (Including Metals)

- **Essential workers.** The guidance adds “workers manufacturing or providing parts and equipment that enable the maintenance and continued operation of essential businesses and facilities” as essential workers.

Hygiene Products and Services

- **Pest control.** The guidance adds workers supporting “the production of home cleaning and pest control products” to the list.

The guidance notes that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the federal government is in a supporting role. To date more than 30 states and numerous other jurisdictions have incorporated or referenced CISA’s essential workforce guidance.

Other Resources:

- State COVID-19 Lockdowns: What Contractors Operating in “Lockdown” Areas Need to Know
- For the latest updates on COVID-19 across all practice areas and industries, visit: <https://www.wiley.law/covid-19>
- For an updated list of state shutdown orders, visit: https://www.wiley.law/alert-An_Employers_Guide_to_State_Closure_Orders

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