



LORI ANN LANGE



SABAH PETROV

For More Information Please Contact

Lori Ann Lange
llange@pecklaw.com
202-293-8815

Sabah Petrov
spetrov@pecklaw.com
202-293-8815

CISA Issues Guidance on Identifying Critical Infrastructure Workers: Does Your Work Fall Within These Sectors?

The Department of Homeland Security Cybersecurity and Infrastructure Agency (“CISA”), issued Guidance on the Essential Critical Infrastructure Workforce, originally published March 19, 2020 and later updated on March 28, 2020 (“CISA Guidance”). During the COVID-19 response, State and local governments have the power to execute and enforce response activities, while the Federal Government performs a supporting role. The purpose of the CISA Guidance is, “[to assist] State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers.” However, each jurisdiction is encouraged to consider additional public health measures unique to its community, and can add or eliminate sectors necessary to maintain critical infrastructure. Therefore, CISA’s guidance is not binding – it is merely a recommendation that state and local governments should consider. It should not be considered a federal directive. You must check with your state or local governmental entity to determine what their guidance is and not assume that the federal guidance is binding on you.

CISA recommends that state and local government consider employees working within identified sectors to be critical and allowed to go to work. Even though construction itself is not listed as its own sector, to the extent a construction project may be critical to support one of the sectors identified by CISA, it arguably can fall within the sector and be permitted to continue during the jurisdiction’s COVID-19 response. CISA identifies 16 sectors that are considered critical and “have a special responsibility in these times to continue operations.” If your work falls within the 16 identified sectors, CISA considers your work to be part of an essential critical infrastructure workforce. However, as noted above, it will ultimately be the state and local government that will make this determination for state, local, and commercial construction projects.

To the extent a state or locality’s stay at home order references the CISA Guidance without additional clarification, you will need to review the sectors to see if your project falls within one of the sectors. Whether your work or your subcontractor’s work may continue should be determined on a project-by-project basis. You should request direction from your owner.

Of the 16 identified sectors in the CISA Guidance, the sectors considered critical infrastructure work directly related to construction are:

1. **Energy** – This work includes:

- Supporting the construction of renewable energy infrastructure;
- Maintaining, ensuring, or restoring the generation, transmission, and distribution of electric power; or
- New or current construction projects supporting the petroleum industry, or the natural gas, natural gas liquids, propane and other liquid fuels industry, including pipeline construction, and platform and drilling construction and maintenance.



CLIENT ALERT

2. **Water and Wastewater** – Work that involves, “repairing water and wastewater conveyances and performing required sampling or monitoring, including required field staff” to support such operations.
3. **Transportation and Logistics** – Contractors “supporting transportation of chemicals, hazardous, medical, and waste materials to support critical infrastructure, capabilities, functions, and services, including specialized carriers, crane and rigging industry workers.”
4. **Public Works** – This work includes:
 - “Support[ing] the operation, inspection and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel...traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues”;
 - “Support[ing] the operation, inspection and maintenance of essential dams, locks and levees”;
 - Construction of critical or strategic infrastructure;
 - Temporary construction required to support COVID-19 response;
 - Providing “[w]orkers, such as plumbers, electricians, exterminators, builders, contractors, HVAC technicians, landscapers and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings”;
 - Providing “support, such as road and line clearing to ensure the availability of needed facilities, transportation, energy and communications”;
 - Providing support to ensure effective removal of solid waste and hazardous materials;
 - “Support[ing] the inspection and maintenance of aids to navigation, and other government provided services that ensure continued maritime maintenance.”
5. **Communications and Information Technology** – This work includes:
 - Work related to undersea cable infrastructure and support facilities;
 - Supporting Department of Defense internet and communication facilities;
 - Engineers, technicians and associated personnel responsible for infrastructure construction and restoration;
6. **Critical Manufacturing** – This work includes the manufacturing of metals, industrial materials, and semiconductors to support certain critical infrastructure sectors.
7. **HazMat** – This work includes supporting hazardous materials response and cleanup.
8. **Defense Industrial Base** – This work includes:
 - “Support[ing] the essential services required to meet national security commitments to the federal government and U.S. Military”, including, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers; or



CLIENT ALERT

- Contractors, including their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities.
9. **Commercial Facilities** – This sector entails those, who support the supply chain of building materials from production through installation, workers in hardware and building material stores, and workers distributing, servicing, repairing and installing HVAC systems, boilers, furnaces, and other heating, cooling, refrigeration, and ventilation equipment.
 10. **Residential/Shelter Facilities and Services** – This work includes construction projects related to combating the country’s existing housing supply shortage, and construction of residential housing.

While this list above is not meant to be considered an exhaustive list, it encompasses workers and industries that perform a function “essential to continued critical infrastructure viability.” Even if your work falls within a critical infrastructure, you must still follow CDC and OSHA guidance to limit spread of the virus. Construction work by its nature cannot be performed remotely – even so, you should work with your project management team to determine if there are measures that can be taken to ensure social distancing.

The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.

As always, we are pleased to share insights and updates related to legal issues of interest with clients and friends of the Firm. Our records reflect that the recipient of this message is not a European Union “Data Subject” as defined by the General Data Protection Regulation (GDPR), enacted on May 25, 2018. If you are or consider yourself to be a Data Subject under the EU’s GDPR, kindly email Jennifer Papantonio at JPapantonio@pecklaw.com right away. The GDPR requires that all European Union Data Subjects provide explicit consent in order to continue to receive our communications.

C O U N S E L T O T H E C O N S T R U C T I O N I N D U S T R Y

NEW YORK, NY • RIVER EDGE, NJ • MIAMI, FL • WASHINGTON, D.C. • LOS ANGELES, CA
OAKLAND, CA • CHICAGO, IL • AUSTIN, TX • DALLAS, TX • HOUSTON, TX

WWW.PECKLAW.COM