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

On April 17, 2020, the Department of Homeland Security Cybersecurity and Infrastructure Agency (“CISA”) issued Version 3.0 to the Guidance on the Essential Critical Infrastructure Workforce, which originally was published on March 19, 2020 (“CISA Guidance”). One key aspect of Version 3.0 is additional clarification on whether construction is essential.

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.

CISA recommends that state and local government consider employees working within identified sectors to be critical and allowed to go to work. Further, CISA encourages state and local governments to exempt essential critical infrastructure workers from curfews, shelter-in-place orders, and transportation restrictions. Even though construction itself is not listed as its own separate sector, CISA has specifically identified as discussed below, that “[w]orkers performing housing and commercial constructed related activities” and workers supporting the construction of critical infrastructure are working within a critical infrastructure sector and such workers are deemed essential. Therefore, most construction projects may either fall under the Public Works and Infrastructure Support Services sector or the Residential/Shelter Facilities and Services sector. Additionally, if a construction project may be critical to support one of the other sectors identified by CISA, it arguably can fall within such sector and also be permitted to continue during the jurisdiction’s COVID-19 response.

In total, CISA identifies 17 sectors that are considered critical and have a special responsibility in these times to continue operations. If your work falls within the 17 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.



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Of the 17 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.
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:
  - Supporting the construction, maintenance, or rehabilitation of critical infrastructure.
  - Supporting 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;
  - Supporting 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 workers, 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;
  - Supporting 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



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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:
  - Supporting 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
  - 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 – Work under this sector specifically includes the performance of housing and commercial construction related activities, including those supporting government functions related to the building and development process, such as inspections, permitting and plan review services that can be modified to protect the public health, but fundamentally should continue and enable the continuity of the construction industry.

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.

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