

CISA Updates Guidance for Essential Critical Infrastructure Workforce

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On March 28, 2020, the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) issued updated guidance for identifying the "Essential Critical Infrastructure Workforce," which state and local governments may use in making decisions about how best to address the COVID-19 pandemic. The update expands upon CISA's initial guidance published on March 19, 2020, and incorporates significant input from other federal agencies, state and local governments, industry groups¹ and the private sector to address particular COVID-19 needs and synchronize its guidance with state priorities.

Importantly, CISA's advisory list of critical infrastructure sectors, workers and functions is only a recommendation, given that state and local jurisdictions have the authority to implement binding measures to address COVID-19. Over the past several weeks, jurisdictions have taken a variety of approaches, including movement, gathering and business operation restrictions (*e.g.*, whitelisting vs. blacklisting businesses that can operate, shelter-in-place requirements vs. only gathering size restrictions); and CISA continues to encourage jurisdictions to revise their essential workforce designations based on their own individual needs and requirements as local situations evolve.

New Critical Workforce Designations

CISA's revisions to its advisory list incorporate more expansive as well as targeted language for many functions. In particular, CISA updated many categories to include workers who support critical functions by providing maintenance, equipment, supplies, storage, transport or other types of support. For example, workers who maintain, manufacture, or supply equipment and services to law enforcement and emergency services as well as those that help store, transport or distribute chemicals, medicines, vaccines and other substances used by the food and agriculture industry are now specifically included. IT staff, specifically those providing information security support, as well as workers providing physical security services, are newly identified as critical for many sectors and functions.

The Energy Section, including renewables, saw some of the most extensive additions, with broadened designations for many support services, such as the manufacturing and distribution of equipment, supplies and parts necessary to maintain production. New and existing construction projects for renewable energy infrastructure and the petroleum and natural gas industries, including pipeline construction, are also now identified as critical.

¹ See, *e.g.*, <https://www.businessroundtable.org/business-roundtable-letter-to-the-us-department-of-homeland-security-on-list-of-essential-critical-infrastructure-workers>.

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CISA incorporated several revisions to address the continued operation of businesses that support individuals in their daily lives while under movement and gathering restrictions. For example, retail customer support service and information technology staff necessary for online, pickup and delivery orders, as well as workers necessary to support SaaS (software as a service) businesses for remote working, business operations performance, distance learning, media services, digital health offerings, or business continuity and connectivity were identified as critical. Operators of warehouses, delivery services, ride-sharing services, and vehicle and equipment rentals are new additions to the advisory list. Workers supporting the distribution of food, pharmaceuticals, medical materials, fuels and chemicals for water treatment, energy maintenance and highway infrastructure operations are also now included.

Several entirely new sections of the advisory list focus on maintaining certain sectors of the economy that relate to daily living. The new Commercial Facilities section focuses on the building materials supply chain from production through application/installation as well as ecommerce support. A new Residential/Shelter Facilities and Services section focuses on support services for people and animals, property leasing and maintenance, and housing construction and development. Finally, a Hygiene Products and Services section captures services like laundry/dry cleaning services, consumer goods repair and maintenance, janitorial/cleaning personnel and producers of hygiene products. CISA also added workers providing residential and commercial real estate services, acknowledging potential concerns with housing market stagnation.

In addition to designating specific workers and functions, CISA incorporated a few broad provisions to capture COVID-19 relief and remote working. For example, the Essential Functions section now includes a catchall category for “workers supporting

essential maintenance, manufacturing, design, operation, inspection, security, and construction for essential products, services, and supply chain and COVID 19 relief efforts.” Critical Manufacturing now includes “workers who produce or manufacture parts or equipment that supports continued operations for any essential services and increase in remote workforce (including computing and communication devices, semiconductors, and equipment such as security tools for Security Operations Centers (SOCs) or datacenters),” and language covering semiconductor manufacturing as well as the mining and production of critical minerals.

Closely related to the critical workforce designations, CISA has not made any changes to its “Access Letter” program, which currently addresses only communications-related critical infrastructure workers. More specifically, CISA currently provides letters — via state broadcasting organizations — for workers supporting broadcasting facilities.² Although CISA is considering expanding this program to other essential sectors, it has not yet done so and thus these letters — at least with CISA’s imprimatur — remain unavailable to other sectors covered by CISA’s critical workforce guidance.

Looking Ahead

As the COVID-19 crisis continues and its impact extends, critical workforce designations by state and local governments are likely to change quickly. CISA is expected to further update its guidance as it continues to work with state and local governments and the private sector to understand their current and anticipated needs. Businesses should closely monitor their state and local governments to understand present and shifting designations for essential critical workforces.

² See, e.g., <https://nysbroadcasters.org/2020/03/covid-19-u-s-dept-homeland-security-issues-letters-for-broadcasters-access-fuel/>.