



“Essential Business” Designations Expanded By Federal Advisory Memo

Insights

3.30.20

The Cybersecurity & Infrastructure Security Agency (CISA) just issued [an updated memorandum](#) listing the industries that contain the Essential Infrastructure Workforce – and it contains good news for many businesses that can now consider themselves part of this critical designation.

This is an important development because CISA’s original March 19, 2020 list of the 16 essential industries provided a blueprint for states, cities, and counties in creating their lists of essential businesses that would not be subject to shelter in place orders. Some governments, in fact, directly referenced the March 19 CISA Memorandum as forming the basis for their essential business designations, while others used it as a starting point to generate their own lists of essential businesses. Regardless, the fact that CISA has updated the Memorandum is a significant development because of the importance it has occupied since being promulgated.

Significant Changes

Some of the key changes to the Memorandum are the following:

- CISA states in the preamble of the revised Memorandum that it developed it in conjunction with state and local governments and that those entities should use their own discretion in adding or subtracting categories. This is likely a recognition that the original Memorandum played an important role in shaping the scope of essential business lists in numerous shelter-in-place orders. The new preamble also includes an acknowledgment that many workers for essential businesses “may be unable to perform [their] functions because of health-related concerns.”
- The Healthcare/Public Health section now includes references to chiropractors, optometrists, and health manufacturing workers.
- The Law Enforcement/Public Safety/First Responder section includes a number of new categories, including workers who help manufacture safety equipment, firearms/ammunition, and security staff.
- Convenience stores and pet food/supply stores are now specifically covered as essential businesses.
- CISA added a host of categories of energy workers, including a catch-all provision at the start that references “workers supporting the energy sector, regardless of the energy source.”

- The Transportation and Logistics section is now also more detailed, as it covers truck drivers, bus drivers, “employees supporting personal and commercial transportation services” (such as taxis and ride-sharing services), and last-mile delivery services. Significantly, CISA also provided guidance to auto dealers by referencing workers “critical to rental and leasing of vehicles and equipment that facilitate continuity of operations for essential workforces and other essential travel.” This creates an authorization for at least some car dealerships to keep their rental and leasing operations open to a degree.
- Communications companies received an assurance that their “retail customer service personnel at critical service center locations” have been deemed essential workers (at least by CISA).
- Employees supporting the judicial system, the Census, and the news media are now all specifically covered, as are employees who support “residential and commercial real estate services.”
- CISA addressed the question of “what if we supply essential businesses” in several different ways, such as by covering “mining and production of critical minerals” and “workers who produce or manufacture parts or equipment that supports continued operations for any essential services.”
- The financial services industry received the assurance that “workers who are needed to maintain orderly market operations” are now explicitly considered to be essential.
- Finally, CISA added several new categories: Commercial Facilities (building materials, e-commerce, hardware, and heating/cooling systems), Residential/Shelter Facilities and Services (including housing construction), and Hygiene Products and Services.

Conclusion

Overall, CISA expanded the list of essential businesses significantly. The revised Memorandum reflects that a number of business groups have provided input in the past week regarding essential services that they provide, and that CISA addressed the myriad issues that have arisen since it first issued a Memorandum on essential businesses on March 19.

Fisher Phillips and the Fisher Phillips Essential Business Task Force will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or [any member of our Essential Business or COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Michael P. Elkon
Partner
404.240.5849
Email

Service Focus

Workplace Safety and Catastrophe Management

Industry Focus

Automotive Dealership

Hospitality

Retail