

INSIGHTS

Expanded CISA Guidelines Broadens the Scope of “Essential Business” for Manufacturing and Construction Operations

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As states and other jurisdictions continue to implement, amend, and clarify their stay-at-home orders, many continue to define Essential Businesses through the guidelines issued by the Cybersecurity and Infrastructure Security Agency (CISA). Approximately twenty states have referenced the Guidelines, including but not limited to Texas, California, Louisiana, Michigan, Indiana, Connecticut, North Carolina, Minnesota, Maryland, Montana, Tennessee, Wisconsin, West Virginia, Idaho, Kansas, Kentucky, Oklahoma and Massachusetts. The CISA updated its [guidelines](#) (“Guidelines”) on March 28, 2020. The update to the Guidelines is important because it has clarified and expanded the types of construction and manufacturing businesses that may continue operations during the Coronavirus (COVID-19) response. The Guidelines have expanded existing sectors (like Critical Manufacturing), and now also contains entirely new sectors such as Commercial Facilities and Residential/Shelter Facilities and Services. This alert serves to point out some of the important additions to CISA’s critical sectors that might apply to your manufacturing or construction business. However, this article is not inclusive of all the changes, so a full review of the revised Guidelines is recommended to determine the impacts on your particular business.

Critical Manufacturing

CISA has significantly expanded the Critical Manufacturing sector to include manufacturing of metals (including steel and aluminum), industrial minerals, and semiconductors. This change alone will encompass many manufacturing businesses that were not previously considered essential. Additionally, this sector now includes the operation of several supply chains including those associated with transportation, energy, communications, information technology, food and agriculture, chemical manufacturing, nuclear facilities, wood products, commodities used as fuel for power generation facilities, the operation of dams, water and wastewater treatment, processing and reprocessing of solid waste, emergency services, and the defense industrial base. This exception includes workers that might be needed to maintain the allowed manufacturing functions and supply chains, as well as workers that are necessary to maintaining a manufacturing operation in warm standby.

Finally, there is a new addition for workers who produce or manufacture parts or equipment that support continued operations for any essential services and/or an increase in a remote workforce (including computing and communication devices, semiconductors, and equipment

such as security tools for Security Operations Centers (SOCs) or datacenters). This is an important addition because it recognizes that businesses (previously labeled as non-essential) that are material suppliers for essential businesses, are now correctly considered essential.

Other Community or Government Based Operations and Essential Functions

While CISA has made significant changes to this sector, the most important change for businesses with manufacturing and construction operations is the addition of a new exception that includes workers supporting essential maintenance, manufacturing, design, operation, inspection, security, and construction for essential products, service, and supply chain and COVID 19 relief efforts. The broad nature of this addition provides another broad exception for some suppliers that are not necessarily listed as essential, but support other operations that are essential.

Commercial Facilities

The Commercial Facilities sector is new and provides helpful exceptions for manufacturing and construction industries hoping to maintain operations. It includes an exception for workers who support the supply chain of building materials from production through application and installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coating, and employees who provide services that enable repair materials and equipment for essential functions. Workers in hardware and building material stores, consumer electronics, technology and appliance retail, and related merchant wholesalers and distributors are also considered essential in this new sector, and as well as workers distributing servicing, repairing, installing residential and commercial HVAC systems, boilers, furnaces, and other heating, cooling, refrigeration, and ventilation equipment. With the addition of hardware and building material stores as essential businesses, it provides an argument for suppliers of consumer products to these stores to continue operating.

Residential/Shelter Facilities and Service

The addition of the Residential/Shelter Facilities and Service sector is also helpful for manufacturing and construction companies. This sector focuses on the residential side, including construction of housing and services that aid in the construction and eventual selling of residential housing. It includes exceptions for workers in dependent care services, in support of workers in other essential products and services, workers performing housing construction related activities to ensure additional units can be made available to combat the nation's existing housing supply shortage; and workers supporting the construction of housing, including government functions related to the building and development process such as inspections, plan review services, and other services that aid in the process of residential construction.

Conclusion

As discussed in [previous guidance](#), it is important to continue to check on stay-at-home orders that were previously issued because they are often modified or revised in response to public responses or questions. We expect to see more revisions in the future, and also expect that additional states will incorporate the CISA Guidelines in an effort to be uniform. The Bracewell team is always available to assist with advice regarding the applicability of stay-at-home orders from any jurisdiction.