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# Non-Essential Workplace Restrictions and Critical Infrastructure during COVID-19

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On March 16, 2020 President Trump announced that those who work in a critical infrastructure industry have a special responsibility to maintain their normal work schedule during the COVID-19 Crisis. On March 19, 2020, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency ("CISA") issued an initial list of "Essential Critical Infrastructure Workers" to provide guidance on what industries are considered Critical Infrastructure sectors. While this list gives important guidance, it is not binding because state and local governments decide what sectors, sub-sectors, segments, or critical functions should continue normal operations to the extent possible. Since the issuance of this guidance, several states including California, New York, Pennsylvania, New Jersey, Illinois, Connecticut, Nevada, Delaware, Kentucky, Michigan, Maryland, Massachusetts, and Indiana have restricted access to workplaces for non-life-essential workplaces and industries, while many other continue to weigh such options. **At this time, North Carolina has not yet implemented such restrictions.**

While the states that have implemented such restrictions vary in how they categorize essential versus non-essential jobs and industries, most have been using CISA guidance for critical industries as a framework for determining the businesses that are exempt from statewide, temporary shutdowns. On March 19, 2020, CISA issued a Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response. Included in that memorandum is the following is a list of industries that CISA considers to be critical infrastructure:

- Healthcare/Public Health;
- Law Enforcement/Public Safety/First Responders;
- Food and Agriculture;
- Energy (including electrical, petroleum, and natural and propane gas workers);
- Water and Wastewater;
- Transportation and Logistics;
- Public Works;
- Communications and Information Technology;
- Other community based government operations and essential functions;
- Critical manufacturing;
- Hazardous Materials;
- Financial Services;
- Chemical; and
- Defense Industrial Base.

CISA did not limit this list to "front line" employees, rather it recognizes that there is a vast ecosystem of workers essential to continued critical infrastructure. This ecosystem includes, but is not limited to "staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions." For example, while doctors and nurses

are clearly considered part of the healthcare sector, CISA also considers health insurance, homeless shelters, and funeral homes part of the critical infrastructure under this sector. Additionally, downstream contractors or manufacturers within a supply chain may end up being considered critical (for example, companies that have contracts to supply materials to Department of Defense contractors may fall within the Defense Industrial Base industry).

Even if a business or a portion of that business is critical infrastructure, CISA advises that employers modify their business operations to limit the spread of COVID-19. This means that workers should be encouraged to work remotely when possible and focus on core business activities. Furthermore, in-person, non-mandatory activities should be delayed until the resumption of normal operations. If remote work is not possible, businesses should adopt other policies to stop the spread of COVID-19. These policies could include things like staggering shifts and increasing the physical distance between employees. The goal of these policies is to preserve the workforce and allow critical operations to continue.

Tuggle Duggins will continue to monitor actions taken by North Carolina and other states where our clients have operations and will update our clients accordingly. Should you have any questions or concerns on whether your business qualifies as a part of critical business infrastructure and what this classification means, please contact Nathan Duggins at [Nduggins@tuggleduggins.com](mailto:Nduggins@tuggleduggins.com) or (336) 271-5246, Alan Felts at [Afelts@tuggleduggins.com](mailto:Afelts@tuggleduggins.com) or (336) 271-5215, or Matt Hoyt at [Mhoyt@tuggleduggins.com](mailto:Mhoyt@tuggleduggins.com) or (336) 271-5203. Please also follow our Twitter account @TuggleDuggins at <https://twitter.com/TuggleDuggins> for continuing, up-to-date information related to navigating the law during the COVID-19 outbreak.

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