

Designating Critical Infrastructure Workers and Workers Necessary for Minimum Basic Operations

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If your business continues to conduct in-person operations during the Stay at Home Order issued by Governor Whitmer, EO 2020-21 ("Order"), you need to operate in good faith compliance with the [Order](#) and the Cybersecurity and Infrastructure Security Agency's March 19, 2020 [guidance](#). This means, in large part, that your working employees must be designated in good faith as critical infrastructure workers or workers necessary to maintain minimum basic operations. A willful failure to properly designate these workers is a violation of the Order and a misdemeanor offense.

I. Designate Critical Infrastructure Workers by 11:59 pm on March 31

Critical infrastructure workers may continue in-person operations and are defined as "workers who are necessary to sustain or protect life." This includes, but is not limited to, health care, energy, transportation and logistics, and financial services workers. A business employing critical infrastructure workers is permitted by the Order to designate suppliers, distribution centers, or service providers whose continued on-site employment is necessary for the maintenance of operations.

Businesses must designate which of their workers are critical infrastructure workers and/or which of their suppliers, distribution centers, or service providers are critical to their continued operation **in writing before midnight on April 1, 2020**. While the Order does not require employees to carry this designation with them as they travel to and from work, doing so may help avoid potential issues.

Significantly, a business designated as critical or employing some critical infrastructure workers cannot assume that the entire business or all employees qualify as critical. Only those portions of the business and employees directly supporting the critical work meet this definition.

II. Designate Employees Required to Conduct Minimum Basic Operations by 11:59 pm on March 31

Even if you employ no critical infrastructure workers and perform no critical work, employees "whose in-person presence is ... necessary to allow the business or operation to maintain the value of inventory or equipment, ... ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of ... other workers to work remotely" may be required to report to work. Examples:

- A golf course can require that payroll personnel come onsite to process payroll.
- An accounting firm can require IT staff to work on-site to facilitate the remote work of others.

Employers must designate the employees necessary to conduct minimum basic operations **in writing before midnight on March 31, 2020**. While the Order does not require employees to carry this designation with them as they travel to and from work, doing so may help avoid potential issues.

If you need assistance preparing the designation documentation, determining which employees or which portions of your business qualify as critical, or which of your employees conduct minimum basic operations, call Bodman's Workplace Law Group. We can assist.

WORKPLACE LAW PRACTICE GROUP

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