



ACA Connects Member Advisory

Department of Homeland Security Issues Guidance to State and Local Government Officials for Identifying Essential Critical Infrastructure Workers During COVID-19 Response

Agency Provides Letters to Communications Providers to Assist Them in Interacting with State and Local Authorities for Purpose of Continuing Operations

State and Local Governments Have Authority Not to Follow Federal Guidelines and Letters, Leading to Different Rules Applying in Different Areas

On March 19, 2020, the Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA) released [Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response](#) ("the List"). The List is intended to provide guidance to state and local authorities about the types of sectors and workers these authorities should permit to freely move within and between jurisdictions, as well as to assist in securing priority in their conduct of activities related to continuity of operations and incident response, among other things. Earlier this month, CISA made letters available to communications providers to assist these operators in interacting with state and local authorities for purposes of maintaining their business operations. However, state and local authorities are ultimately in charge of implementing and executing the activities in the communities under their jurisdiction, and whether they follow the CISA guidelines may vary, with some adopting the guidelines and others taking their own approaches.

CISA's Guidance on the Essential Critical Infrastructure Workforce

CISA issued the List in an effort to foster a common national approach by states and localities to continuity of functions critical to public health and safety, as well as economic and national security. It is geared towards assisting state and local authorities' decision making in balancing public safety with ensuring the continued delivery of critical infrastructure services and functions. The List is based on several key principles, among them that workers should be encouraged to work remotely when possible and focus on core business activities.

CISA's list identifies the communications and information technology sectors as critical infrastructure, consistent with DHS's longstanding identification. More specifically, the List delineates eight categories of communications sector workers, which include some workers who

cannot perform their job from their homes. For example, one category encompasses “[i]nallation, maintenance and repair technicians that establish, support or repair service as needed.” Other categories reference network operations personnel and even customer service and support staff, recognizing that while some personnel particularly with the latter functions may be able to perform their tasks ably via telework, some will still need to be at the office to successfully support their companies’ critical missions. ACA Connects notes that certain types of workers are not covered at this time, such as workers at retail stores and service centers. CISA emphasized that it will update the List as the response to COVID-19 evolves and, in fact, it already has done so once (albeit with generally technical amendments). ACA Connects expects further updates to be posted on CISA’s Coronavirus webpage: <https://www.cisa.gov/coronavirus>.

The Role of State and Local Authorities. As a practical matter, being designated by the federal government as a “critical infrastructure sector” or an “essential” worker in that sector does *not* guarantee a work or continuity of operations obligation. Additionally, worker categories not included on the list does not necessarily mean that such employees will be prohibited by a state or locality from working outside of the home when the general public is restricted from doing so. Because State, local, tribal, and territorial governments have authority to implement and execute COVID-19 response activities in communities under their jurisdiction, federal designations of what is “critical” or who is “essential” in this context only carry the weight of “guidance” and do not compel any particular action, interpretation, or deference by such governments. Therefore, you may encounter different approaches by different states or localities to whether your company is considered “critical,” if so, which particular workers are considered “essential,” what the scope of critical services are, and what that means as far as exemptions from quarantines or geographically-based access restrictions. Nevertheless, the purpose of the federal government designations is to attempt to maximize a uniformity of approach towards continuity of operations of sectors that are inextricably linked to the national welfare, such as the communications sector. In addition, several states, in issuing orders shutting down non-essential functions, specifically refer back to federal designations of critical sectors in determining what they do and do not consider subject to their shutdown orders.

ACA Connects encourages its members to familiarize themselves with the CISA guidance and leverage it when dealing with state and local authorities if on-the-ground agents present obstacles to essential workers doing their jobs in areas where movement has been restricted.

Other DHS Measures to Help Navigate On-the-Ground Authorities to Facilitate Continuity of Operations

In addition to issuing guidance to state and local officials for identifying essential critical infrastructure workers, CISA has made available letters that communications providers may use through May 28, 2020, to help secure access to restricted areas for their workers and priority access to fuel. As discussed above with respect to the CISA guidance, the effectiveness of these letters is likely to vary on a local-by-local basis. In particular, ACA Connects notes these letters do not provide detail on the exact personnel functions that CISA considers “essential,” which means state and local authorities may quibble with communications providers over such matters. These letters may prove more effective when shown with the CISA Guidance.

CISA requests that these letters not be posted publicly without restricted access.

Access to Restricted Areas. In the face of quarantines, curfews, and geographic area access restrictions, providers may experience some resistance from authorities on the ground to

providers' free movement in subject areas, even where necessary to restore, maintain, or augment infrastructure and networks. In an effort to help overcome any obstacles to necessary access, CISA has supplied a letter that providers may use as appropriate to advocate for provider access to areas where there is enforced containment and restriction of free movement into and out of the communities they serve. Login to the [Members Lounge](#) to access the letter.

Access to Fuel. Similar to the CISA letter pertaining to access to restricted areas, CISA made available a letter to providers of critical communications infrastructure, that may be leveraged to gain priority access to fuel to execute restoration activities and for the operation of generators and response fleet vehicles to prevent communications outages until commercial power is restored. Login to the [Members Lounge](#) to access the letter.

Access to Personal Protective Equipment. At this time, CISA does not issue any guidance or letters that would encourage states to provide the communications sector with priority access to Personal Protective Equipment (PPE), such as face masks, and other supplies such as hand sanitizer, thermometers, and COVID-19 test kits. Communications providers may seek to leverage their "critical" status in pressing State Emergency Operations Centers for high placement on state prioritization lists for distribution of PPE, however as of now, states are invariably directing any PPE stocks they receive to the health care community.

Other DHS Guidance for Businesses during COVID-19 Response: Cyber Vigilance

With the proliferation of organizations increasingly electing and/or being pragmatically forced to implement telework, CISA encourages organizations to adopt a heightened state of cybersecurity. For instance, CISA published a [document detailing steps for enhanced enterprise VPN security](#). CISA also has [warned individuals to remain vigilant for scams related to COVID-19](#), such as phishing campaigns luring recipients with purported must-read COVID-19 information to open attachments that deliver malware. You may wish to review your company's cyber defense protocols during this time, as well as remind employees of good cyber hygiene just as they are focused on new guidelines for personal and social hygiene.

For Additional Information

If you have questions about CISA's Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response or the letters for gaining access to restricted areas and priority access to fuel, you may contact CISA at CISA.CAT@cisa.dhs.gov. You may also reach Mike Jacobs, ACA Connects Vice President of Regulatory Affairs, at mjacobs@acaconnects.org.

For additional information about CISA's efforts related to COVID-19, visit the CISA Information & Updates on COVID-19 website at <https://www.cisa.gov/coronavirus>.

ACA Connects Wants to Hear From You

We encourage you to share with us information about state and local issues that you are facing in your continued delivery of critical infrastructure services and functions, such as gaining access to restricted areas, fuel, or PPE. Moreover, we welcome your input regarding any matters on which you think DHS or CISA could provide useful guidance, such as appropriate protocols for in-person, on-premises installation or repair services. Please send any such information or input to Mike Jacobs at mjacobs@acaconnects.org.

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