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Updated: Are My Employees Exempt from Travel Restrictions as Critical Sector Employees Under the Minnesota Stay-At-Home Order?

Legal Update

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Question

Minnesota's Governor issued a stay-at-home Order on March 25, 2020, and then extended this order on April 8, 2020. How do I know if my employees are exempt from travel restrictions as critical sector employees under the stay-at-home Order?

Answer

On March 25, 2020, Governor Walz issued Executive Order 20-20, "Directing Minnesotans to Stay at Home" (the "stay-at-home Order"). The Order provided that employees of critical sectors are exempted from travel restrictions so they can travel to and from their place of employment. On April 7, 2020, Governor Walz issued Executive Order 20-33, "Extending Stay at Home Order and Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation," which extended the Order and modified Minnesota's list of critical sectors that qualify for this exemption. Many employers are asking how to determine whether their employees qualify for this exemption.

In short, the stay-at-home Order is self-authorizing, meaning each business must make this determination based on the information provided by the State of Minnesota in conjunction with the stay-at-home Order. Do not expect the state to certify your employees as exempt; that is not likely to happen. Also, if your employees can perform their jobs remotely (i.e. working from home), they must do so, regardless of whether they work for a critical sector.

So how do you make the determination? The following three documents provide guidance so that your business can determine if its employees qualify for the Critical Sector work exemption.

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First and foremost, review Minnesota's Critical Sectors Workers Definitions and Clarifications document, which is a comprehensive list of Critical Sectors, and includes clarifications of those definitions that have been added since Minnesota initially ordered its stay-at-home Order. Importantly, the guidance adds an exemption for "Minimum Basic Operations," which allows exempts workers needed to maintain the business' inventory, facilities, equipment or other basic operations. Additionally, as noted by the amount of blue text in the document, the guidance makes many additions and clarifications for each sector. This document is intended to be a single source of all workers who qualify for the exemption, so this should be the first and maybe only document you need to review.

If you have further questions, there are two additional documents that provide guidance. You can review the text of Executive Order 20-33. In addition to the definitions of each critical sector, this document provides the Governor's reasoning for issuing a stay-at-home order, which can aid an assessment of whether your business is essential. Additionally, many of Minnesota's definitions are based on the essential sectors identified by the Cybersecurity and Infrastructure Security Agency (CISA). Thus, you can also review the CISA Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.

If your employees fit into one of the categories of workers provided in the above documents and they cannot perform their duties remotely, they may continue to travel to and from your place of business. If it does not appear that your employees fall within the Critical Sector categories, you are encouraged to contact the Minnesota Department of Employment and Economic Development through this email: CriticalSectors@state.mn.us.

Takeaway

Review all three documents above to determine which, if any, of your employees qualify for an exemption and can continue to travel to and from work. If you have questions on your specific business or how to make this determination, contact your Fredrikson & Byron Employment & Labor attorney.

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