

Employment Question of the Day: March 26, 2020

Firm News

03.26.2020

By Teresa M. Thompson and Lukas S. Boehning

Question

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

Answer

Yesterday, March 25, 2020, Governor Walz issued Executive Order 20-20, "Directing Minnesotans to Stay at Home" (the "Order"). The Order provides that employees of critical sectors are exempted from travel restrictions so they can travel to and from their place of employment. Many employers are asking how to determine whether their employees qualify for this exemption.

In short, the 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 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? You must review the following three sources to determine your employees' eligibility. Importantly, your employees only need to qualify under **one** of the three sources—the CISA guidance, the Order, or the Minnesota Critical Businesses List, so it is important to review all three.

1. First, review the March 19, 2020 Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (the CISA guidance). This document provides a baseline of employees in 16 sectors that are considered critical in Minnesota, such as employees in the Food and Agriculture, Energy, Transportation and Logistics, and Communications and Information Technology sectors. If your employees fit into one of the categories of workers provided by the CISA guidance, they may continue to travel to and from your

place of business.

2. Second, review the Order itself. The Order identifies 35 critical sectors and provides examples of workers for each sector. Although there is some overlap with the employees identified under the CISA guidance, the Order provides additional categories of exemptions, such as legal services and charitable organizations. If your employees fit into one of the categories of workers provided by the Order, they may continue to travel to and from your place of business.
3. Third and finally, review the Minnesota Critical Businesses List published by the Minnesota Department of Employment and Economic Development (MN DEED). This list differs from the two other sources because it provides exemptions based on the industry of the business, not the function of the *employee*. As a result, many employees not listed in the CISA guidance or the Order may be exempt under this list. To see if your employees are exempt from this document, you need to know your North American Industry Classification System (NAICS) Code. According to MN DEED's website, if a *business* is part of a Critical Industry on this list, its employees are considered critical employees and may continue to travel to and from your place of business.

If it does not appear that your employees or industry fall within the Critical Sector categories under any of the three documents, you can request clarification by filling out a request to MN DEED.

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 and Byron Employment & Labor attorney.

[View All: COVID-19 Employment Question of the Day](#)