

Real Estate and Construction Industries are Deemed Critical Sectors by Governor Walz

Alert

04.01.2020

By Christine Eid and Steve Schemenauer

Minnesota Governor Tim Walz's [Executive Order 20-20](#) requesting Minnesotans to limit movements outside of their homes to help slow the spread of COVID-19 runs through April 10 at 5 p.m. The order provides a limited exemption from the travel prohibition to "critical sector" workers who are performing work that can be done only at a place of work outside of their home or residence. The order is informed by guidance from the Cybersecurity and Infrastructure Security Agency (CISA) Guidance, which was incorporated into the order, as well as the National Association of Industry Code Standards (NAICS) industry code list.

Below is a listing of exemptions current as of Friday's publication:

Real Estate Exemptions

Notably, paragraph hh of the order exempts workers in the critical sector of "Real Estate Transactions." This category is limited to workers who facilitate and finance real estate transactions and real estate services, including appraisers and title services.

Paragraph dd of the order exempts workers in the critical sector of "Notaries." Notaries performing services that cannot be deferred and cannot be accomplished via remote services under Minnesota Statutes 2019, section 358.645 may continue to perform those services.

Workers in the critical sector of hotels, residential facilities and shelters are exempt pursuant to paragraph z of the order. This includes workers supporting hotels and motels, and workers needed to keep apartment complex buildings and other congregate residences or homes operational and sanitary.

Real Estate and Construction Industries are Deemed Critical Sectors by Governor Walz

- Relating to real estate and the ability for transactions to continue to be financed, as well as the opportunity for landlord and tenants to coordinate with lenders, workers in the critical sector of financial services are exempt pursuant to paragraph 1 of the order. This includes workers at banks, credit unions, insurance companies and other financial services workers identified in the CISA Guidance.
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities.

The additional guidance provided by the CISA is as follows:

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

Construction Exemptions

The exemptions for the construction industry are broad, and the order, CISA guidance and NAICS list need to be read in conjunction with each other. Salient exemptions related to the construction industry include the following:

Executive Order:

- Workers engaged in roadway construction, maintenance and utility projects
- Public works projects, including “construction material suppliers and workers providing services necessary to maintain construction material sources for public works”
- “[W]orkers necessary to provide repairs, maintenance, and operations support to residential dwellings”
- “Workers supporting building code enforcement necessary to maintain public safety and health of essential infrastructure and any construction as required in response to the COVID-19 peacetime emergency including but not limited to construction of health care facilities and essential businesses and services, or construction as required for emergency repairs and safety purposes”

Real Estate and Construction Industries are Deemed Critical Sectors by Governor Walz

- “[W]orkers in the skilled trades such as electricians, plumbers, HVAC and elevator technicians, and other related construction of all kind. This category also includes exterminators, cleaning and janitorial staff for commercial and governmental properties, moving and relocation services, security staff, operating engineers, and all other service providers who provide services that are necessary to maintain the safety, sanitation, and essential operation of homes and residences and the Critical Sectors listed in this executive order”
- “Workers at businesses that sell products, tools, materials, or supplies necessary for: (1) the above Critical Sectors to continue their essential operations, (2) for workers to work from home or (3) for the maintenance of the safety, sanitation and essential operation of homes or residences”

CISA Essential Critical Infrastructure Workforce Categories:

- Construction of critical or strategic infrastructure
- Workers such as plumbers, electricians, exterminators and other service providers who provide services that are necessary to maintaining the safety, sanitation and essential operation of residences
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Workers supporting the provision of essential global, national and local infrastructure for computing services (including cloud computing services), business infrastructure, web-based services and critical manufacturing
- Personnel working for companies, and their subcontractors, who perform under contract to the DOD, providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

Key takeaways for Minnesota’s workers and businesses:

1. Critical sector exemptions do not apply to workers who are performing work that can be done at their home or residence through telework or virtual work. It only covers workers performing work that can only be done at a place of work outside of their home or residence.
2. The order does not mean that all real estate transactions or construction activities are able to continue unimpeded. By way of example, though the order allows a real estate appraisal to occur, the real estate appraiser may make the independent determination to keep its employees at home. Furthermore, cities and counties may be limited in staffing, which may delay services integral to real estate transactions and construction activities. Finally, there are conflicts between the order and the NAICS list, making it critical to ensure that your specific business is truly exempt.

Real Estate and Construction Industries are Deemed Critical Sectors by Governor Walz

3. If you operate a business and question whether you fit within a Critical Sector category, Stinson attorneys have analyzed similar “stay at home” orders in other states and are available to advise.
4. A company’s failure to comply with the order could result in the disqualification of otherwise available insurance coverage. Stinson attorneys are available to provide individual guidance on this issue.
5. The administration is updating the NAICS list daily and reviewing requests for clarification and exemptions through their website. Due to the fluidity and rapidly evolving nature of the COVID-19 crisis response, the list of exemptions requires daily attention. Businesses and workers should check the website for updates and reach out for assistance if they have questions.

As COVID-19 and its impact on business operations continues to evolve, our Coronavirus Task Force has issued a number of alerts on legal issues impacting clients. A compilation of alerts can be found on the Coronavirus Task Force News & Insights page, including real estate and construction issues, insights regarding employer response to the coronavirus outbreak, HIPAA issues and insurance and contractual obligations. The task force, a cross-disciplinary team of attorneys who advise clients on a wide variety of COVID-19 business-related subjects, serves to provide both legal and best practice information that you may find relevant.

CONTACT

Stephen Schemenauer

RELATED CAPABILITIES

Construction

Real Estate & Public Finance

STINSON

STINSON LLP \ STINSON.COM