

Are Equipment Distributors “Essential”?

March 23, 2019

MICHAEL A. AIRDO, FOUNDING MEMBER, KOPON AIRDO, LLC

DANIEL B. FISHER, VICE PRESIDENT OF GOVERNMENT AFFAIRS, AED



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 - General Provisions and Variations
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Overview



Guidance & Orders Issued-To-Date

CISA Guidance on Essential Critical Infrastructure Workforce

State “Shelter-In-Place” & “Stay-At-Home” Orders

- New York (Effective March 21)
- California (Effective March 19)
- Pennsylvania (Effective March 19)
- Connecticut (Effective March 23)
- Illinois (Effective March 21)
- New Jersey (Effective March 21)
- Louisiana (Effective March 23)
- Ohio (Effective March 23)



Purpose & Intent

Broadly, the purpose and intent of these Orders is to:

- Slow the spread of COVID-19 to the greatest extent possible
- Ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible
- Enable essential services and ensure continued operations of critical infrastructure services and functions.



General Provisions

Shelter-In-Place & Stay-At Home Requirements

- Requires persons to stay home, except to perform “essential activities” (e.g., health and safety, necessary supplies and services, outdoor activity, to care for others)

Restrictions On Operations of Businesses

- Restricts operation of businesses, except for certain “essential businesses or operations” and operations consisting of employees or contractors performing activities at their own homes or places of residence (e.g., work from home and telecommute).

Social Distancing

- Requires that “essential businesses and operations” and persons performing “essential activities” comply to the extent feasible with “social distancing” requirements.



Variations in Restrictions on Businesses

California, Connecticut, New York & Pennsylvania

- Requires reduction of in-person workforce by 100%

Louisiana, Ohio, Illinois, & New Jersey

- Requires reduction of in-person workforce, except for **minimum essential operations** (such as payroll, maintaining inventory, preserving physical plant and equipment, ensuring security, etc.)



Variations in “Essential Businesses”

California & Louisiana

- Adopted the CISA Guidance on the Essential Critical Infrastructure Workforce.

Connecticut, Ohio, & Pennsylvania

- Adopted the CISA Guidance on the Essential Critical Infrastructure Workforce, with additional elaboration.

New York, Illinois, & New Jersey

- Adopted independent definitions of “essential businesses.”



Variations in Enforcement

California, Pennsylvania, Illinois, & New Jersey

- Potential Criminal and Civil Penalties

New York

- Potential Civil Penalties

Louisiana, Ohio, & Connecticut

No enforcement provisions or penalties enumerated at this time



Variations in Local Authority

California, Ohio, & Illinois

- Local governments may issue more restrictive orders

New York & Connecticut

- Local governments may issue more restrictive orders only with consent of state government

New Jersey

- Local governments may not issue more restrictive orders

Louisiana & Pennsylvania

- No guidance has been issued to date as to whether local governments may issue more restrictive orders.



Are Equipment Distributors “Essential”?



California & Louisiana



Essential Critical Infrastructure Workers

California and Louisiana have adopted the CISA Guidance on the Essential Critical Infrastructure Workforce for Ensuring Community and National Resilience in COVID-19 Response.



CISA: “Essential Critical Infrastructure Workers”

Healthcare/Public Health

Law Enforcement, Public Safety, First Responders

Food and Agriculture

Energy

- Electricity Industry
- Petroleum Workers
- Natural and Propane Gas Workers

Water and Wastewater

Transportation and Logistics

Public Works

Communications and Information Technology

Other Community-Based Government Operations and Essential Functions

Critical Manufacturing

Hazardous Materials

Financial Services

Chemical

Defense Industrial Base



Key Provisions for Equipment Distributors

Food and Agriculture

- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution.



Key Provisions for Equipment Distributors

Public Works

- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste



Key Provisions for Equipment Distributors

According to CISA, the guidelines are intended to be construed broadly

However, if you supply equipment to these sectors, it is not specifically enumerated whether you are “essential”

- Healthcare/Public Health
- Energy
- Communications and Information Technology
- Defense Industrial Base



Additional Guidance: CISA

CISA will continually solicit and accept feedback on its guidance and update its guidance in response to stakeholder feedback.

Feedback is requested and can be sent to CISA.CAT@CISA.DHS.GOV.

We expect the guidance will be updated shortly.



Additional Guidance: California

In consultation with the Director of the Governor's Office of Emergency Services, the Governor may designate additional sectors as critical.

State Public Health Officer designated a list of “Essential Critical Infrastructure Workers” on March 20, 2020.

- Does not substantially differ from CISA Guidance.



Enforcement: California

Penalties for non-compliance with the Order may be imposed pursuant to California law, including, but not limited to, Government Code Section 8665, which could result in:

- A conviction of a misdemeanor
- A term of imprisonment of up to six months
- A fine of up to \$1,000.00



Enforcement: Louisiana

Louisiana's Order does not include enforcement provisions or penalties for non-compliance.

Governor Edwards urged Louisiana residents to comply or officials could consider mandating stops.



Connecticut



Essential Businesses and Entities

Connecticut has adopted the CISA Guidance, and designated additional “essential businesses, as follows:

- Healthcare and related operations
- Infrastructure
- All Manufacturing and Corresponding Supply Chain
- Retail
- Food and Agriculture
- Services
- Providers of Basic Necessities to Economically Disadvantaged
- Construction
- Services necessary to maintain the safety, sanitation, and essential operations of all residences and other buildings
- Vendors that provide essential products and services to ensure the continuing operation of government agencies and provide for the health, safety, and welfare of the public



Key Provisions for Equipment Distributors

Same as under the CISA Guidance:

- Food and Agriculture
- Public Works
- Clarity as to:
 - Healthcare/Public Health
 - Energy
 - Communications and Information Technology
 - Defense Industrial Base



Key Provisions for Equipment Distributors

Construction

- General construction, both commercial and residential
- Other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes
- Planning, engineering, design, bridge inspection, and other construction support activities



Key Provisions for Equipment Distributors

Infrastructure

- Dam maintenance and support
- Water and wastewater operations, systems, and businesses
- Telecommunications and data centers
- Transportation infrastructure
- Utilities including power generation, fuel supply, and transmission



Additional Guidance: Connecticut

Any other business may be deemed essential after requesting an opinion from the Department of Economic and Community Development.

Requests may be submitted at the following link:

- <https://portal.ct.gov/DECD/Content/Coronavirus-for-Businesses/Essential-Business-Designation-Form>

Requests will be granted if the DECD determines that it is in the best interest of the State of Connecticut to have the workforce continue at full capacity to properly respond to this emergency.



Enforcement: Connecticut

Connecticut's Order does not include enforcement provisions or penalties for non-compliance.



Ohio



Essential Businesses and Operations

Healthcare and Public Health Operations

Human Services Operations

Essential Infrastructure

Essential Governmental Functions

CISA List

Stores that sell groceries and medicine

Food, beverage, and licensed marijuana production and agriculture

Organizations that provide charitable and social services

Media

First amendment protected speech

Gas stations and businesses needed for transportation.

Financial and insurance institutions

Hardware and supply stores

Critical trades



Essential Businesses and Operations

Mail, post, shipping, logistics, delivery, and pick-up services

Educational institutions

Laundry services

Restaurants for consumption off-premises

Supplies to work from home

Supplies for Essential Businesses and Operations

Transportation

Home-based care and services

Residential facilities and shelters

Professional services

Manufacture, distribution, and supply chain for critical products and industries

Critical labor union functions

Hotels and motels

Funeral services



Key Provisions for Equipment Distributors

Essential Infrastructure

- Includes, but is not limited to: food production, construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); roads, highways, railroads, and public transportation; ports; flood control; solid waste and recycling collection and removal; telecommunications systems; and local infrastructure for computing services, business infrastructure, communications, and web-based services.
- Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.



Key Provisions for Equipment Distributors

Manufacture, Distribution, and Supply Chain for Critical Products and Industries

- Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.



Enforcement: Ohio

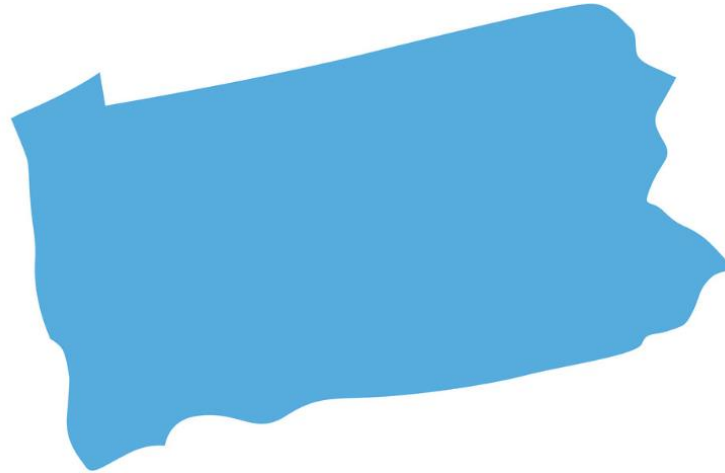
Ohio's Order does not include enforcement provisions or penalties for non-compliance.

When asked what penalties might be imposed on violators, Governor DeWine said that has not been determined.

- "This was not designed to be punitive, but it's not just a recommendation, either," he said. "It is a health order."



Pennsylvania



Life Sustaining Businesses

Pennsylvania has adopted a list of “life sustaining businesses” that “aligns” with the CISA Guidance

- Natural Resources and Mining
- Construction
- Manufacturing
- Trades, Transportation, & Utilities
- Information
- Financial Activities
- Professional and Business Services
- Education and Health Services
- Leisure and Hospitality
- Other Services



Key Provisions for Equipment Distributors

Construction

- Construction of buildings, heavy and civil engineering construction (including highway, street, and bridge construction), and specialty trade contractors are **not permitted**, except emergency construction of health healthcare facilities and emergency repairs.



Key Provisions for Equipment Distributors

Trade, Transportation, & Utilities

- Machinery, equipment, and supplies merchant wholesalers are permitted.



Key Provisions for Equipment Distributors

Financial Activities

- Commercial and industrial machinery and equipment rental and leasing are permitted.



Key Provisions for Equipment Distributors

Other Services

- Commercial and industrial machinery and equipment repair and maintenance are permitted.



Additional Guidance: Pennsylvania

If a business listed for closure believes it could help mitigate this crisis by providing a life sustaining service, it can seek an exemption.

Waiver applications may be obtained from the Department of Community and Economic Development at ra-dcedcs@pa.gov, by calling 1-877-PA-HEALTH and selecting option 1, or visiting the following link:

- <https://expressforms.pa.gov/apps/pa/DCED/Waiver-process-keeping-physical-locations-open>



Enforcement: Pennsylvania

Penalties for non-compliance with the Order may be imposed pursuant to the Pennsylvania Administrative Code of 1929, 71 P.S. § 1409 law, and/or the Pennsylvania Disease Prevention and Control Law of 1955, 35 P.S. § 521.20(a), which could result in:

- A conviction of a summary offense
- A fine of up to \$300.00
- A term of imprisonment of up to thirty days

Violators may also be subject to additional administrative penalties under certain circumstances



New York



Essential Businesses and Entities

Essential health care operations

Essential infrastructure

Essential manufacturing

Essential retail

Essential services

News media

Financial Institutions

Providers of necessities to economically disadvantaged populations

Construction

Defense

Essential services necessary to maintain the safety, sanitation and essential operations of residences or other essential businesses

Vendors that provide essential services or products, including logistics and technology support, child care and services



Key Provisions for Equipment Distributors

Construction

- Other related construction firms and professionals for essential infrastructure or for emergency repair and safety purposes.



Key Provisions for Equipment Distributors

Essential infrastructure

- Utilities including power generation, fuel supply and transmission
- Public water and wastewater
- Telecommunications and data centers
- Airports/airlines
- Transportation infrastructure such as bus, rail, or for-hire vehicles, and garages



Key Provisions for Equipment Distributors

However, if you supply equipment to these sectors, it is currently not enumerated whether you are “essential”

- Essential Healthcare Operations
- Essential Retail
 - Grocery Stores
 - Hardware and Building Material Stores
- Essential Services
 - Trash and recycling collection, processing and disposal
 - Warehouse distribution and fulfillment
- Defense



Additional Guidance: New York

Any other business may be deemed essential after requesting an opinion from the Empire State Development Corporation.

Requests may be submitted at the following link:

- https://esd.ny.gov/sites/default/files/Request%20for%20Designation%20Form_0.pdf

Requests will be granted if the ESDC determines that it is in the best interest of the state to have the workforce continue at full capacity to properly respond to this Disaster.



Additional Guidance: New York

With respect to business or entities that operate or provide both essential and non-essential services, supplies or support, **only those lines and/or business operations that are necessary to support the essential services, supplies, or support are exempt from the restrictions.**



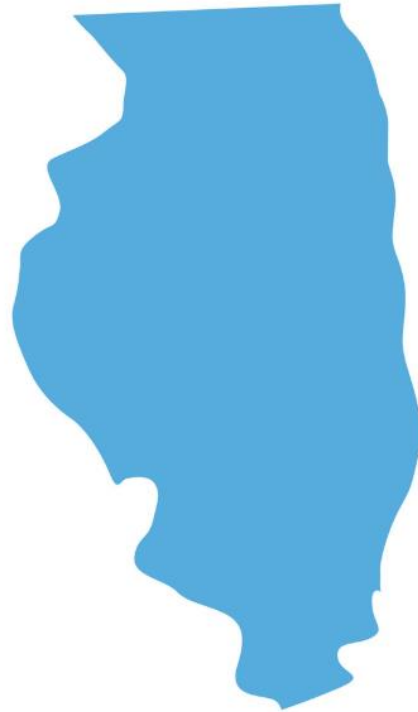
Enforcement: New York

Business that violate the Order concerning the non-essential business closures may be held liable, pursuant to Section 12 of the State Public Health Law, for civil penalties of up to:

- \$2,000 for every violation
- \$5,000 for a subsequent violation where the person committed the same violation within 12 months of the initial violation
- \$10,000 if the violation results in serious physical harm to any patient.



Illinois



Essential Businesses and Operations

Healthcare and Public Health Operations

Human Services Operations

Essential Infrastructure

Essential Governmental Functions

Stores that sell groceries and medicine

Food, beverage, and cannabis production and agriculture

Organizations that provide charitable and social services

Media

Gas stations and businesses needed for transportation.

Financial institutions

Hardware and supply stores

Critical trades

Mail, post, shipping, logistics, delivery, and pick-up services



Essential Businesses and Operations

Educational institutions

Laundry services

Restaurants for consumption off-premises

Supplies to work from home

Supplies for Essential Businesses and Operations

Transportation

Home-based care and services

Residential facilities and shelters

Day care centers for employees exempted by the Order

Manufacture, distribution, and supply chain for critical products and industries

Critical labor union functions

Hotels and motels

Funeral services



Key Provisions for Equipment Distributors

Essential Infrastructure

- Includes, but is not limited to: construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); roads, highways, railroads, and public transportation; ports; flood control.
- Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.



Key Provisions for Equipment Distributors

Manufacture, Distribution, and Supply Chain for Critical Products and Industries

- Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.



Enforcement: Illinois



The Order may be enforced by State and local law enforcement pursuant to, *inter alia*, Section 7, Section 18, and Section 19 of the Illinois Emergency Management Agency Act, 20 ILCS 3305.

According to Governor Pritzker, violators will be subject to:

- Warnings
- Cease-and-Desist Orders
- Licensure penalties, such as fines, suspension, and revocation
- Conviction of a misdemeanor offense
-



New Jersey



Essential Retail Businesses

Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store

Pharmacies and alternative treatment centers that dispense medicinal marijuana

Medical supply stores

Retail functions of gas stations

Convenience stores

Ancillary stores within healthcare facilities

Hardware and home improvement stores

Vehicle rental locations



Essential Retail Businesses

Retail functions of banks and other financial institutions

Retail functions of laundromats and dry-cleaning services

Stores that principally sell supplies for children under five years old

Pet stores

Liquor Stores

Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics

Retail functions of printing and office supply shops

Retail functions of mail and delivery stores



Other Commercial Operations

Manufacturing, industrial, logistics, ports, heavy construction, shipping, food production, food delivery, and other commercial operations may continue operating, but as explained above, they should limit staff on site to the minimal number to ensure that essential operations can continue.



Examples of Employees That Cannot Perform Functions Remotely

Law enforcement officers, fire fighters, and other first responders

Cashiers or store clerks

Construction workers

Utility workers

Repair workers

Warehouse workers

Lab researchers

Information technology maintenance workers

Janitorial and custodial staff

Certain administrative staff



Other Exemptions

Nothing in the Order shall be construed to limit, prohibit, or restrict in any way:

- Healthcare or medical services
- Essential services for low-income residents
- Newspapers, television, radio, other media services
- Law enforcement
- Federal government



Key Provisions for Equipment Distributors

Lacks clarity as to whether equipment distributors are:

- “Non-essential retail businesses” which must close to the public
- “Other commercial operations” which may continue in-person operations



Key Provisions for Equipment Distributors

If you supply equipment to these sectors, it is currently not clear whether you are “essential”

- Healthcare or medical services
- Essential services for low-income residents
- Newspapers, television, radio, other media services
- Law enforcement
- Federal government
- Industrial, heavy construction, food production, and other commercial operations



Key Provisions for Equipment Distributors

Employees that cannot perform functions remotely

- Repair workers
- Administrative Staff
- Warehouse workers



Additional Guidance: New Jersey

The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions.



Enforcement: New Jersey

Penalties for non-compliance with the Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50, which could result in:

- A conviction of a disorderly persons offense
- A term of imprisonment of up to six months
- A fine of up to \$1,000.00



Practical Tips



Hippocratic Oath



Social Distancing & Other Guidelines

If you continue operations, follow and enforce guidance regarding:

- Social Distancing
- Respiratory Etiquette
- Hand Hygiene
- Cleaning and Disinfecting



On Display



Liability Considerations

Workers' Compensation Issues

Third-Party Liability Issues

Be Smart!



Authorization Letters

Obtain “Papers”

- Louisiana, Ohio, & Connecticut
 - Probably not necessary
 - No enforcement provisions or penalties at this time
- Illinois & California
 - Not necessary, per Governor
- Pennsylvania, New York, & New Jersey
 - May be necessary
 - Potential Criminal and/or Civil Penalties



Monitor

Federal agency guidance, such as CISA

Further State Executive Orders

Additional orders by local authorities

- California and Illinois in particular



AED Activities

- Working with the federal government's CISA and the construction industry to clarify all the sector's workers as "essential"
- Weighing-in with states and localities about the need to keep construction projects going and the essential nature of companies that sell, rent, service equipment
- Partnering with national organizations to ensure the best possible outcome for AED members and our customers
- Visit AED's [Corona Virus Update Center](#) regularly for the latest information



Communicate

Elected Officials

- Federal, State, and Local
 - Mayor or Village President
 - County Board Chairs
 - Township Supervisors

Customers and Customer Groups



Questions?

