



Sunday, March 29, 2020

TO: WLCA Members

FROM: Dave McCormack - Axley Brynelson LLP
WLCA Member dmccormack@axley.com

RE: CISA Confirms Landscapers as Essential Workers

On March 28, 2020, the Cybersecurity and Infrastructure Security Agency (CISA) issued [new guidance](#) amending the “Essential Critical Infrastructure Workforce” list to add Landscapers to workers considered essential for Public Works and Infrastructure Support Services under its “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response.” *This is important because CISA’s list of Essential Critical Infrastructure Workforce businesses is incorporated into Wisconsin’s Safer at Home Order.*

The Safer At Home Order was issued on March 24, 2020, and went into effect on *March 25, 2020. Initially, Governor Evers’ Office issued a FAQ document on March 24, 2020, which stated that landscapers were not included as an Essential Business and Operation. One reason landscaping was not an Essential Business and Operation was because it was not included in the CISA’s initial Memorandum as part of the Essential Critical Infrastructure Workforce.*

The Safer At Home Order identifies those “Essential Businesses and Operations” that may continue to operate during the order. Section 13(a) of the Safer At Home Order specifically includes any business listed in the CISA’s Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19

Response, updated March 23, 2020, “and any subsequent versions of this Memorandum.” This means that the newest version of the CISA Memorandum adopted on March 28, 2020 is incorporated into the Safer At Home Order, and landscape businesses may remain open and their employees may continue to perform landscaping work.

The specific reference to Landscapers in the updated Memorandum can be found in the second bullet point provided in the Section entitled PUBLIC WORKS AND INFRASTRUCTURE SUPPORT SERVICES:

- Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings such as hospitals, senior living facilities, any temporary construction required to support COVID-19 response. This updated version of the CISA Memorandum which now includes landscapers as workers considered essential means that landscapers are excluded from the Safer at Home Order and can work. However, landscapers should exercise sound judgment in choosing the work they perform. *The Memorandum advises that “. . . owners and operators are expected to use their own judgement on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support. All decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions.”*

Landscapers, like all other Essential Businesses and Operations under the Order shall, to the greatest extent possible, use technology to avoid meeting in person including virtual meetings, teleconference, and remote work (i.e., work from home). To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in the Order; in doing so, Essential Businesses and Operations shall, to the greatest extent possible, ensure that both employees and members of the public are maintaining six-foot social distancing, including but not limited to when any customers are standing in line.

When taking any action permitted under the Order, all individuals, organizations, government bodies, and any other permitted group of individuals shall, to the extent possible, follow DHS guidelines located here: <https://www.dhs.wisconsin.gov/covid-19/index.htm>.

All Essential Businesses and Operations shall comply with DHS guidelines for businesses located here: <https://www.dhs.wisconsin.gov/covid-19/employers.htm>

As always, consult with an attorney for legal advice specific to your business.

Dave McCormack, Axley & Brynelson, LLP 262-244-9093 dmccormack@axley.com
