



**SCHOOL EMPLOYEES WHO ARE ESSENTIAL
CRITICAL INFRASTRUCTURE WORKERS**

March 26, 2020

Following Governor Inslee's March 23 Proclamation 20-25 ("[Stay Home – Stay Healthy](#)"), which prohibits work and travel outside the home by employees who are not providing "essential business services," a number of our school district clients have inquired whether various categories of school employees would be considered "essential" and therefore exempt from the scope of the order. This email presents the results of our review of the "[Essential Critical Infrastructure Workers](#)" list referenced in the Governor's proclamation.

Under the category of "Other Community-Based Government Operations and Essential Functions," we believe many school employees could be considered part of the essential workforce within the following categories:

1. **"Workers supporting public and private childcare establishments, licensed pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, or the provision of school meals, or child care for the children of essential workers across all sectors and for uniquely vulnerable children."**

This is the broadest category and appears to exempt all K-12 employees from the stay-home order. It is possible that someone may have intended to limit this exemption to workers providing distance learning, school meals, or childcare, but that interpretation would not be consistent with the grammar of this provision.

2. **"Critical government workers, including the Governor's Office, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans."**

This category is also broad and would allow a school district to exempt any employee consistent with a continuity-of-operations plan. While most continuity plans would likely focus first on critical functions like business and finance, human resources, technology and data security, facility and vehicle maintenance, and board operations, we note that OSPI has also been urging school districts to maintain a "continuity" of educational services during the closure in its [latest bulletins](#).

3. **"Workers to ensure continuity of building functions."**

This category could apply to many school district facility-support employees, such as custodians and maintenance workers.

4. **“Security staff to maintain building access control and physical security measures.”**

This category could apply to employees specifically assigned as security officers, but also to custodians or other employees who assist with building access and security.

5. **“Workers that maintain digital systems infrastructure supporting other critical government operations.”**

This category clearly exempts many of a district’s technology-support staff.

6. **“Workers at operations centers necessary to maintain other essential functions.”**

This category could apply to almost anyone at a school district’s central office.

7. **“Professional services, such as legal or accounting and tax preparation services, when necessary to assist in compliance with legally mandated activities and critical sector services.”**

This category specifically exempts workers providing professional services necessary for the school district to meet its legal mandates, including compliance with contracts (e.g., labor agreements), tax and payroll functions, and accounts payable obligations. Many central office employees and administrators may fall within this category. This category could also be read to apply to professionals necessary to meet any legally mandated activities with students (e.g., special education responsibilities).

8. **“Workers providing, maintaining and repairing heating, cooling and refrigeration services.”**

Employees providing HVAC support to school district facilities are specifically exempt under this category.

9. **“Professional employer organizations providing payroll benefits, regulatory assistance and HR services.”**

This appears to be an additional category that would endorse finance, HR, and payroll employees as being within the essential workforce.

Nothing requires that a school district designate any or all of the district’s employees as being exempt based on the above categories—a district could send them all home if it wants to. But we believe the above language definitely provides school districts with the authority and flexibility to designate as “essential” those employees who are necessary to maintain district operations, as well as provide childcare and food services. We suggest that districts apply

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judgment and discretion to identify who is necessary to safeguard the security and functionality of district infrastructure, including but not limited to facilities, financial operations, and technology.

The attorneys at Porter Foster Rorick LLP are also properly considered essential workers by virtue of the legal services support we provide to our school district clients in their performance of critical sector services. Our office remains open, and our attorneys remain available to provide responsive legal advice to our school district clients as needs develop and evolve. If you have any questions about the subject of this email other issues, we encourage you to contact any attorney on our team.

Thank you for your continuing efforts to serve your local community during this time of difficulty.

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