

# ALCORN

LAW CORPORATION

March 22, 2020

Sandra Giarde, Executive Director  
California Landscape Contractors Association  
1491 River Park Drive, Suite 100  
Sacramento, CA 95815

Dear Ms. Giarde:

Thank you for your recent request for a legal opinion concerning interpretation of Executive Order No. N-33-20 as it relates to landscape contractors as "Essential Critical Infrastructure Workers." The key issue is whether or not landscape contractors are an "Essential Workforce" within the meaning of the Executive Order.

I start by noting that the meaning of the Executive Order, and how the Executive Order will be applied in specific work situations, is not clear in many cases. Certainly, a physician, a nurse, a police officer, a firefighter and similar occupations are clearly part of an Essential Workforce. But is the company that sells the hospital its cleaning supplies and replacement parts a part of that Essential Workforce? Is the company that stocks the hospital's supplier also part of that Essential Workforce? Is a worker who spends only part of their time performing essential functions part of that Essential Workforce? How much time must that worker spend on essential functions in order to be considered part of the Essential Workforce? Neither the Executive Order nor the explanations of that order (and local orders like it) answer these questions. Further, we have no legal precedents for the validity or interpretation of these orders. Indeed, this is a very unsettled area of law.

As you know, on March 20, 2020, Governor Newsom's Office of the Small Business Advocate issued comments concerning "CISA-Guidance on Essential Critical Infrastructure Workers." Those comments included a recommendation that workers who are driving as part of their work carry a letter stating that the worker is performing tasks deemed essential through the Executive Order.

The issue then becomes whether or not landscape contractor functions are "Essential." Essential functions likely to be applicable to CLCA members include, but are not limited to, the following:

1. EMERGENCY SERVICES SECTOR; Law Enforcement, Public Safety and First Responders, including "**Fire Mitigation Activities.**"
2. EMERGENCY SERVICES SECTOR; Public Works, including "**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.**"
3. ENERGY; Electricity Industry, including "**Vegetation management crews** and traffic workers who support."
4. WATER AND WASTEWATER, including "**Workers repairing water and wastewater conveyances ...**"
5. OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS; including "**Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects** (including housing construction)" and "**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 construction sites and construction projects** (including those that support such projects to ensure the availability of needed

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***facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).***

6. CHEMICAL; including ***“Workers supporting the operation and maintenance of facilities ...”***

Landscape contractors and maintenance workers are frequently directly involved in fire mitigation activities, work to maintain the safe and sanitary operation and condition of residences, maintaining and repairing wastewater conveyances, maintenance of construction sites, carrying out construction projects, work to maintain the safety of residences and construction sites, and work to ensure the removal of solid waste and work supporting the operation and maintenance of other essential functions.

It also seems apparent that an “essential” worker need not spend all of their time performing just essential tasks. For example, grocery stores are remaining open for business. The fact that grocery store employees sell non-essential goods such as candy and alcoholic beverages illustrates this point. It is my belief that a worker who performs material amounts of essential tasks as part of their job qualifies that person as an essential worker.

For these reasons, and given that CLCA members are licensed contractors performing tasks that directly advance one or more of the above referenced purposes, it is my opinion that many if not all landscape contractors and maintenance workers are “Essential” within the meaning of Executive Order No. N-33-20.

I recommend that CLCA advise its members to carry with them the following while working:

- A. State issued identification
- B. A copy of the March 20, 2020 letter from the Office of the Small Business Advocate
- C. A copy of Executive Order No. N-33-20
- D. A copy of this letter, and
- E. A letter from the firm that employs the worker that attests to the fact that the employee is an employee of that firm, and that asserts that the employee is carrying out at least some essential functions as part of his or her employment.

Please bear in mind that I am not, in issuing this letter, providing legal advice to members of CLCA; my client is CLCA itself. It is up to each member of CLCA to determine the extent to which this letter is applicable to the work of their firm. It is also imperative that every CLCA member take all necessary precautions to prevent the spread of the COVID-19 virus through social distancing and similar best practices, such as frequent handwashing and shelter in place when feasible.

Please let me know of any questions or concerns about this or any other matter. Thank you.

Cordially,

Alcorn Law Corporation

By



Mark D. Alcorn  
Attorney at Law