

# COVID-19 and Border Crossings: Considerations and Best Practices for Global Constructors and Suppliers who Cross United States, Canadian, and European Borders

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### Who Needs to Know

Any company with cross-border supply chains or employee travel.

### Why It Matters

COVID-19 related travel restrictions may slow employee travel and logistics, and disrupt global suppliers and supply chains. The decision whether a worker is critical or essential and will gain admittance is often made on a case-by-case basis and can differ based upon the specific worker, the worker's job functions, and the country. Reviewing restrictions and exceptions of the intended country of travel and ensuring your work and employees are deemed essential will help to minimize disruptions and keep cross-border operations running smoothly.

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The COVID-19 pandemic continues to impact the construction industry, and many countries continue to implement new or more stringent restrictions on entry into their borders. Those travel restrictions can impact any company with cross-border supply chains or employee travel. This article addresses some of the travel restrictions in place in the United States, Canada, and members of the European Union (EU); exceptions to those requirements; and some best practices when navigating across borders.

## International Border Crossing Restrictions and Essential Worker Exemptions

Border crossing restrictions generally focus on entry of persons from specific countries or regions, as well as the imposition of mandatory quarantines or testing requirements, including proof of a negative test before entry or a negative test within a certain number of hours after entry. But most countries exempt "critical" or "essential" workers from those requirements. Upon arrival in a particular country, it may be necessary to prove that you qualify as an essential or critical worker to gain entrance. It may also be necessary for you to prove that your intended work cannot be performed remotely.

The U.S., Canada, and the EU each provide guidance on essential workers and industries, which is fairly consistent across the regions. It is critical to assess the types of workers and industries deemed essential depending on your intended destination.

The [U.S. Cybersecurity & Infrastructure Security Agency \(CISA\)](#) provides guidance on the categories of workers deemed essential to critical infrastructure viability and supply chains. Canada provides a similar list. In the [Public](#)

[Safety Canada Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic](#), critical infrastructure is defined to include “the processes, systems, facilities, technologies, networks, assets, and services essential to the health, safety, security or economic well-being[.]” Canada classifies critical infrastructure according to 10 sectors, all of which involve the construction industry:

- Energy and Utilities
- Information and Communication Technologies
- Finance
- Health
- Food
- Water
- Transportation
- Safety
- Government
- Manufacturing

The EU released its own guidance — [Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak](#) — which deems essential many of the same services and industries as those described by the U.S. and Canada.

While the guidelines set forth above are helpful in determining whether your workers may be deemed essential in a particular country, they are only guidelines. Whether an individual is admitted to a particular country may depend on the reviewing border agent, and this determination is often made on a case-by-case basis. The particulars, including the worker, the worker’s specific job functions, and the country, may all affect this decision.

### **Country- and Region-Specific Considerations**

It is also critical to review the intended country’s specific guidelines. Some information on country-specific guidance for the U.S., Canada, and the EU, and where more information can be found, is provided below.

**United States.** The U.S. and Canada currently have an agreement in place to restrict nonessential travel across the U.S.-Canadian land border. Essential cross-border activities are permitted, including those that “support health security, trade, commerce, supply security, and other essential activities[.]” While “other essential activities” is not defined, the described-above CISA guidelines provide additional guidance on activities deemed essential in the U.S.

The U.S. also has imposed restrictions on travel from a number of other countries, including many in the EU, China, Brazil, and South Africa. Generally, these restrictions include suspending or limiting travel to the U.S., with specific exceptions. Recently, the U.S. also imposed testing and quarantine requirements upon international arrivals.

**Canada.** Canada has imposed pre-testing entry requirements that universally apply to all travelers. These include requiring nearly all individuals entering Canada to provide proof of a negative test prior to being admitted into the country. Canada also generally requires entrants to quarantine for 14 days. Essential workers, however, are

[exempt](#) from the testing and quarantine requirements whether arriving from the U.S. or another country. Before travelling to Canada for essential work, consider answering [this questionnaire](#) to determine whether you are likely to gain admittance into the country.

**European Union.** The EU has adopted a [collaborative approach](#) to allow for the free movement of individuals between member countries, with appropriate restrictions. Members developed a [color-coded map](#) to help guide decisions on travel restrictions, including bans, quarantines, and testing requirements. Even essential workers arriving from the most impacted areas of the EU may be subject to testing and quarantine requirements. Generally, however, those traveling to perform essential functions are exempt from travel restrictions and mandatory quarantines.

The guidance for workers arriving to EU member countries from outside the region is less clear. As of January 28, the EU has recommended that member countries gradually lift travel restrictions from the following countries: Australia, New Zealand, Rwanda, Singapore, South Korea, Thailand, and China. Thus, workers travelling to an EU member country from other countries may still face certain restrictions.

Ultimately, each EU member country may impose travel restrictions or other requirements it deems necessary. Restrictions may differ for essential workers traveling within the EU versus essential workers arriving from other countries.

### **Best Practices for Essential Workers Crossing International Borders**

**Review Country-Specific Guidelines.** As explained above, the U.S., Canada, and EU member countries have different travel restrictions and requirements in place to curb the spread of COVID-19. Essential workers are generally exempt from these requirements. However, given that entrance decisions are often made on a case-by-case basis, there is no guarantee that your workers, even if believed to be performing essential functions, will be admitted to a particular country. Moreover, even essential workers may be subject to certain travel restrictions in particular countries. Thus, it is critical to review the country-specific guidelines and exceptions to ensure your workers are deemed essential and will be admitted to the intended country.

**Essential Employee Work Letters.** Global companies with employees who frequently cross borders for essential functions may also consider providing those employees with an essential employee work letter. These letters explain why the employee is an essential worker and why the employee can only perform the particular work by entering the intended country. It may be helpful to identify and include specific language from guidance issued by the intended country. And, if possible, tailor the letter to the particular employee, including their specific job functions. Whether an individual is an essential worker and admitted into a particular country is often made on a case-by-case basis. If your employee encounters problems, a reasoned and personalized letter explaining why the particular employee is performing essential functions could be critical to speedy entry.

**Continue to Track All Schedule and Impact Costs.** Travel restrictions and other entry requirements may slow logistics and disrupt global suppliers and supply chains. Even if suppliers and essential workers are exempt from these restrictions, COVID-19-related restrictions may still cause delays and force international travelers and suppliers to incur additional costs. To ensure you have the proper support for any potential cost or schedule impact claim, it will be critical to track all delays and additional costs resulting from COVID-19-related restrictions.

The potential applicability of any specific travel restrictions or other requirements to your business, and the effects of such restrictions on your business, can vary widely. While there is a plethora of information concerning COVID-19 travel restrictions and exceptions for essential workers and global suppliers, navigating this information and ensuring compliance can be a complex endeavor.

The information above is for informational purposes only and is not intended to serve as providing legal advice. If you have further questions or seek advice based on your specific situation, please reach out to any members of the Troutman Pepper Construction Group. You may also find additional information on the [Troutman Pepper COVID-19 Resource Center](#).

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