



## Guide to Bringing Back Workers and Resuming Operations for Michigan Municipalities

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***While this article is meant to act as a basic guide, the laws surrounding COVID-19 are constantly evolving. Contact a Foster Swift attorney for the most up to date rules and regulations before taking action.***

As Michigan continues resuming operations, municipal employers must adhere to a number of health and safety protocols established by state and federal authorities, including the Governor's Executive Order 2020-161, Safeguards to protect Michigan's workers from COVID-19.

### **When Will Municipalities Be Allowed to Resume In-Person Operations?**

Pursuant to Governor Whitmer's "MI Safe Start" plan, there has been an incremental reopening of nine types of workplaces across eight regions of the state, based on progress made to limit the spread of COVID-19. All municipalities across the state have been permitted to operate to perform certain critical functions, such as law enforcement, public transit, trash pick-up, and maintenance of public parks, throughout the pandemic. Other municipal in-person office work were allowed to resume in accordance with regional re-openings, subject to detailed health and safety guidelines discussed below.

### **What Steps Must Municipalities Take to Safeguard its Workers from COVID-19?**

On July 29, Governor Whitmer signed Executive Order 2020-161, which updated requirements employers must implement to protect their employees from COVID-19. Executive Order 2020-161 builds upon and clarifies requirements set forth in previous executive orders. It provides that all employers that have employees work in-person must, at a minimum, develop certain plans and protocols, train employees, and provide equipment and other protections for employees and customers. All employers, including municipalities, must:

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- Develop a COVID-19 preparedness and response plan. Each employer must have a plan and make it readily available to employees, labor unions, and customers/constituents by June 1, 2020 or within two weeks of resuming in-person activities, whichever is later.
- Designate one or more supervisors to implement, monitor, and report on the COVID-19 control strategies developed in the COVID-19 preparedness and response plan. The supervisor must remain on site at all times when employees are present.
- Adopt protocols to clean and disinfect the facility in the event of a positive COVID-19 case.
- Establish a plan for dealing with a confirmed infection in the workplace. Include in it protocols for sending employees home and temporary closures for all or part of the worksite for deep cleaning.
- Adopt any additional infection-control measures that are reasonable for the type of work performed and in the community where the work is performed.
- Follow EO 2020-36, which prohibits discharging, disciplining, or otherwise retaliating against employees who stay home or leave work when they are at a particular risk of infecting others with COVID-19.

In addition, Executive Order 2020-161 lays out individualized and detailed obligations for employers in the following industries: construction, manufacturing, laboratory, retail, office and restaurants/bars. Failure to abide by the executive order can result in a civil penalty issued by the Michigan Occupational Safety and Health Administration (MIOSHA). The amount of the civil penalty issued by MIOSHA varies depending upon the seriousness and the willfulness of the violation.

### **What are the Requirements for Resuming In-Person Office Work?**

For most municipalities, the specific requirements related to resuming in-person office work are most relevant. Pursuant to Executive Order 2020-161, offices must provide safeguards that encourage social distancing and reduce contact between employees. Specific steps must be taken for when employees arrive and when they are in the workplace.

#### ***Employee Arrival***

Employers who operate in office buildings must:

- Assign dedicated entry points for employees to reduce congestion at one entrance.
- Provide visual indicators like tape markings to show appropriate spacing for employees outside the building in case of congestion.
- Reduce entry congestion created by the screening process by staggering start times, adopting a rotational schedule, or other appropriate steps.

#### ***In the Workplace***

Once in the workplace, offices must:

- Require face coverings in shared spaces; this includes hallways, meetings, and restrooms.
- Spread out workspaces to increase distance between employees.

- Restrict non-essential spaces like cafeterias.
- Provide cues to guide movement and activity. For instance, use visual cues to restrict elevator capacity and lock conference rooms to prevent in-person meetings.
- Turn off water fountains.
- Prohibit social gatherings and meetings that do not allow for social distancing.
- Restrict non-essential travel and in-person conference events.
- Suspend non-essential visitors.
- Institute cleaning and communication protocols for if an employee is sent home with symptoms.
- Disinfect high-touch surfaces and minimize shared items when possible.

### ***Required Notifications and Supplies***

Offices must also provide certain notifications and supplies. This requires offices to:

- Post signs about the importance of personal hygiene.
- Notify employees if an individual, including a worker, customer, supplier, or visitor, with a confirmed case of COVID-19 visited the office.
- Provide disinfecting supplies and require employees to wipe down their work stations at least twice daily.

It may be awhile before offices across the state are back to business as usual, even after implementing the safeguards and protocols for office workers whose work cannot be conducted remotely.

### **What About Federal Workplace Laws?**

In addition to state guidelines, municipalities and other employers in Michigan must still abide by federal workplace laws and regulations, including the Americans with Disabilities Act ("ADA"). The U.S. Equal Employment Opportunity Commission ("EEOC") has made clear that equal employment opportunity laws, such as the ADA, continue to apply during the time of the COVID-19 pandemic, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the Centers for Disease Control (CDC) or state/local public health authorities about steps employers should take regarding COVID-19.

The EEOC has provided guidance that can help employers implement strategies to navigate the impact of COVID-19 in the workplace.

### **What Are the Next Steps?**

Municipalities across Michigan should carefully review the reopening guidelines set forth above and in Governor Whitmer's various executive orders. The governor has made clear through her executive orders that state agencies will be investigating workplace compliance and enforcing guidelines. Municipalities should continue, in consultation with legal counsel, developing and updating preparedness and response plans, and address other critical issues that will be necessary to bring workers back safely.



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Foster Swift's attorneys are ready to help you with any questions you have regarding this communication or how to safely restart operations. For questions and concerns related to this article, contact a member of Foster Swift's employment law practice group. For other questions regarding COVID-19 matters, contact your Foster Swift attorney or one of the coronavirus coordinators listed below:

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