

New COVID-19 Orders Impose Additional Requirements and Restrictions on Michigan Businesses

November 16, 2020

In light of the recent surge of COVID-19 cases in Michigan, governmental agencies in charge of workplace safety and public health have issued several directives and guidance to employers and businesses in the hope of curtailing the spread of the virus.

MDHHS November 15, 2020 Emergency Order

On November 15, 2020, the Michigan Department of Health and Human Services (MDHHS) issued the latest **Gathering and Face Mask Order**, which substantially tightened the restriction on gatherings. The order becomes effective on November 18, 2020, and remains in effect until December 8, 2020. In summary, this order:

- Prohibits indoor gatherings at non-residential venues and tightens the limitations of indoor gatherings at residential venues (to no more than 10 people from no more than 2 households), outdoor gatherings at residential venues (to no more than 25 people from no more than 3 households), and outdoor gatherings at non-residential venues (to no more than 25 people with specific attendance limits for venue with and without fixed seating).
- "Household" is defined as a group of persons living together in a shared dwelling with common kitchen or bathroom facilities or individuals who share a bedroom in dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons.
- Limited exceptions to indoor and outdoor gathering restrictions are provided for:
 - Incidental, temporary gatherings of persons in a shared public space,
 - Gatherings between an employee and a customer for the purpose of receiving services;
 - Workplace gatherings consistent with MIOSHA's October 14, 2020 Emergency Rules;
 - Voting or official election-related activities;
 - Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
 - Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
 - Children in a child-care organization or camp setting;
 - Persons traveling on a school bus or other public transit;
 - Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
 - Gatherings of up to 25 persons for the purpose of a funeral; and
 - Residential care facilities;
- Prohibits indoor gatherings at most food services establishments and requires outdoor gatherings to comply with 6-foot distancing.

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- Prohibits most gatherings in schools for students in grades 9 to 12 and gatherings in colleges and universities for in-person instruction, activities, and events.
- Imposes additional restrictions on gatherings in other types of facilities, including entertainment venues, recreational facilities and places of public amusement, retail stores, libraries, museums, exercise facilities, outpatient care facilities, veterinary clinics, pools, and non-essential care service providers.
- Requires all persons participating in gatherings to wear face masks (subject to specified exceptions), as opposed to just strongly encouraging masks as in previous orders. "Face mask" means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual's mouth and nose.
- Continues requiring certain businesses and operations to gather data of customers and patrons for contact tracing, but adds additional requirements on the retention, use, dissemination, and disposal of the data collected.

MIOSHA's COVID-19 Emergency Rules and Additional Clarifications of Remote Work Requirements

On October 14, 2020, the Michigan Occupational Safety and Health Administration (MIOSHA) issued **Emergency Rules regarding the Coronavirus Disease 2019**, which are in effect for six months and establish requirements for employers to control, prevent and mitigate the spread of COVID-19. These requirements mirror those set out in the Governor's safe start orders that were **rendered invalid by the Michigan Supreme Court's recent decision**. Among others, employers are required to:

- Categorize job tasks and procedures into low, medium, high, and very high exposure risks;
- Create written COVID-19 preparedness and response plans consistent with OSHA and CDC guidance including measures to prevent employee exposure based on categorization of job risk;
- Implement infection prevention measures, including prohibiting in-person work to the extent work activities can feasibly be completed remotely;
- Screen all employees and contractors prior to entering the workplace and comply with notification procedures if a positive COVID-19 case is known;
- Implement workplace controls including designating one or more worksite COVID-19 safety coordinators on site at all time when employees are present to implement, monitor, and report on COVID-19 control strategies, masking requirements and posting of COVID-19-related practices;
- Provide employees with necessary personal protective equipment, including respirators if necessary, where appropriate to the exposure risk associated with the job;
- Comply with guidelines for specific industries, including construction, manufacturing, retail, libraries and museum, restaurants and bars, healthcare, in-home services, personal-care services, public accommodations, sports and exercise facilities, meat and poultry processing, and casinos;
- Train all employees on COVID-19 infection-control practices, proper use of personal protective equipment, notification of COVID-19 symptoms or positive diagnoses, and reporting unsafe working conditions; and
- Maintain record of training, screening protocols and required notifications.

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On November 4, 2020, MIOSHA issued an Interim Enforcement Plan to establish the procedures for the agency to investigate and issue citations for workplace hazards related to COVID-19. The interim plan indicates that an employer's failure to implement a remote work policy would be deemed by MIOSHA as a "serious" violation, and lack of the existence of a policy would be cited as "other-than serious" violation of the October 14, 2020 Emergency Rules.

On November 6, 2020, the MDHHS issued guidance entitled "**Keeping A Safe Workplace**," which reinforced the remote work requirement established by MIOSHA's October 14 emergency. In addition, the guidance provides clarification concerning the requirement by employers to prohibit in-person work to the extent work activities can feasibly be completed remotely. Under this guidance, "employers should only permit in-person work when attendance is strictly required to perform job duties," which means that "a worker is unable to physically complete required job tasks from a remote setting." The MDHHS clarifies that this strict requirement does not mean allowing in-person work to limit inefficiency, unproductivity, or costs associated with remote work.

If you have questions about these new developments, please contact your Miller Canfield attorney or the authors of this alert.

This information is based on the facts and guidance available at the time of publication and may be subject to change.