

MIOSHA Extends COVID-19 Workplace Emergency Rules For Another Six Months

April 15, 2021

On April 10, 2021, Governor Gretchen Whitmer signed a **Certificate of Need** extending the Emergency Rules regarding COVID-19 issued by the Michigan Occupational Safety and Health Administration (MIOSHA) on October 14, 2020. The Emergency Rules establish requirements for employers to control, prevent and mitigate the spread of COVID-19.

The Emergency Rules were set to expire on April 14, 2021. Under this Certificate, the Emergency Rules will now remain in place until October 14, 2021, unless terminated or modified sooner by MIOSHA. Under Michigan law, emergency rules can only be extended once for six months. See MCL 24.248. After that, MIOSHA will have to engage in the formal rulemaking process authorized by the Administrative Procedures Act in order to permanently maintain the Emergency Rules. On March 19, 2021, MIOSHA initiated the process of formal rulemaking to preserve the Emergency Rules by submitting a Request for Rulemaking to the Michigan Office of Administrative Hearings and Rules. MIOSHA has also established a standards advisory committee to work alongside the agency in preparing a draft rule. To date, a formal rule has yet to be introduced for comments.

The Certificate also extends all of the Emergency Rules as issued on October 14, 2020. This means that the Emergency Rules do not currently reflect updated guidance from the CDC or address vaccinated workers. Therefore, employers should stay the course and maintain their current COVID-19 policies and practices in the workplace until further guidance is issued.

As a reminder, under the Emergency Rules, 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 masking requirements, posting of COVID-19-related practices, and 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;
- 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, retails, libraries and museum, restaurants and bars, health care, in-home services, personal care services, public accommodations, sports and exercise facilities, meat and poultry processing, and casinos;

Continued

- 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.

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.