

UPDATED: MIOSHA Workplace Rules to be Updated to Reflect Relaxed Mask Mandate

May 21, 2021

UPDATE: On May 20, 2021, Governor Gretchen Whitmer announced a bipartisan agreement with the Legislature to fully negotiate the state budget and federal funding from the CARES Act and the American Rescue Plan Act with the State Budget Director. Under the agreement, the MIOSHA's draft permanent rules would be withdrawn. Additionally, in accordance with the governor's MI Vacc to Normal plan allowing in-person work with the state reaching the 55 percent vaccination threshold, MIOSHA will remove from its standing emergency rules the requirement that employers create "a policy prohibiting in-person work for employees to the extent that their work activities can be feasibly completed remotely." MIOSHA will also update the emergency rules to reflect recent guidance from the CDC and MDHHS, which will take effect May 24, 2021.

On the same day, the governor also announced that the MI Vacc to Normal plan is being accelerated. As of June 1, 2021, there will not be a capacity limit for outdoor events, and indoor capacity limits will increase to 50 percent. Then, by July 1, 2021, there will no longer be any limits on capacity at indoor and outdoor gatherings.

On May 15, 2021, the Michigan Department of Health and Human Services (MDHHS) issued an updated Gatherings and Face Mask Order that follows the CDC's Guidance for Fully Vaccinated People released on May 13, 2021, which says that fully vaccinated individuals do not need to wear masks indoors or outdoors. The May 15 MDHHS Order continues to impose gathering restrictions and requires contact tracing for particular gatherings, but relaxes the face mask requirement. Specifically, there is no longer a requirement in Michigan to wear face masks at outdoor gatherings. Additionally, fully vaccinated persons, defined as persons for whom at least two weeks has passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine, do not have to wear face masks when participating in indoor gatherings. Persons who are not fully vaccinated are still required to wear face masks at indoor gatherings unless one of the limited exceptions applies.

Despite the new MDHHS Order, the MIOSHA Emergency Workplace Rules still require employees to wear face coverings whenever they cannot maintain 6 feet of distance from others, or in common areas. The MIOSHA rules do not make exceptions for fully vaccinated people, which has caused confusion for employers. In an effort to send a consistent message across state agencies, on May 17, 2021, the Department of Labor and Economic Opportunity posted an update on its COVID-19 Workplace Safety Guidance website indicating that MIOSHA will soon post updated workplace rules reflecting the CDC's recent guidance and MDHHS's Order relaxing the face mask requirement for fully vaccinated people. Meanwhile, according to the Department of Labor and Economic Opportunity, until the workplace rules are updated, "MIOSHA will consider compliance with the MDHHS order as good faith to comply when responding to employee complaints or conducting investigations related to COVID-19."

MIOSHA's federal counterpart, OSHA, has also indicated on its January 29, 2021, guidance entitled *Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace* that OSHA is reviewing the CDC guidance and will update the materials in the guidance accordingly. Employers are referred "to the CDC guidance for information on measures appropriate to protect fully vaccinated workers."

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While the update on the COVID-19 Workplace Safety Guidance website attempts to bridge the gap between the current MIOSHA workplace requirements and the new MDHHS order, uncertainty still lingers until the MIOSHA rules are officially revised. In the meantime, please feel free to contact the authors of this alert or your Miller Canfield attorney to discuss how you can get your workplace ready in light of the new MDHHS order and anticipated revised MIOSHA workplace rules.

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