

New COVID-19 Rules and Requirements for Michigan Employers



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A Trip Down Memory Lane

- October 2, 2020: The Michigan Supreme Court holds that the Governor of Michigan had no authority to issue COVID-19 Executive Orders following April 30, 2020.
- October 5, 2020: The Michigan Department of Health and Human Services issues an Epidemic Order prohibiting certain gatherings and requiring Michiganders to wear face coverings in public places.
- October 9, 2020: MDHHS expands its Epidemic Order to cover workplace gatherings



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A Trip Down Memory Lane

- October 14, 2020: The Michigan Occupational Safety and Health Administration issues Emergency Rules concerning COVID-19.
- October 22, 2020: Governor Whitmer signs HB 6032 into law, imposing quarantine and isolation requirements on employees suffering from or exposed to COVID-19.
- October 29, 2020: MDHHS places further limits on gathering limitations in Michigan.



Where Are We Now?

- MDHHS Epidemic Order (10/29/2020)
- MiOSHA Emergency Rules (10/14/2020)
- HB 6032
- MDHHS Guidance to Keep Workplaces Safe (11/6/2020)



MDHHS Epidemic Order (10/29/2020)



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MDHHS Epidemic Order (10/29/2020)

- Source of Authority: Michigan Public Health Code
- “If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.”
- Violations: Misdemeanor punishable by up to six months; imprisonment and/or a fine up to \$200; Also punishable by a civil fine of up to \$1,000/violation or day that a violation continues.

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MDHHS Epidemic Order (10/29/2020)

- Places limits on “gatherings”
- “Gatherings” means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- Applies to meetings and trainings in the workplace, as well as other gatherings in retail facilities, food service establishments, etc.
- In-person work is prohibited if work activities can feasibly be completed remotely (more on this later)!

MDHHS Epidemic Order (10/29/2020)

Limits on attendance at non-residential venues.

INDOORS

- Indoor gatherings occurring at a non-residential venue are permitted only if:
 - FOR FIXED SEATING: No more than 500 persons are gathered, and attendance is limited to 20% of the seating capacity of the venue.
 - WITHOUT FIXED SEATING: No more than **50 persons** are gathered, and attendance is limited to 20 persons per 1,000 square feet in each occupied room.
 - All persons at the gathering wear a face mask.
 - **Only six people are permitted at each table.**

OUTDOORS

- Outdoor gatherings up to 1,000 persons occurring at a non-residential venue are permitted only to the extent that the organizers and venue:
 - FOR FIXED SEATING: limit attendance to 30% of seating capacity.
 - WITHOUT FIXED SEATING: limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space.
 - Require that each person at the gathering wear a face mask.

MDHHS Epidemic Order (10/29/2020)

- Face masks are still required in public spaces



Face masks are still required.

Businesses, government offices, schools, child care organizations, operators of public transit, and all other gathering organizers must not allow indoor or outdoor gatherings of any kind unless they require individuals to wear a face mask. These entities may not assume that someone who enters the business without a face mask falls in one of the exceptions; but may accept an individual's verbal representation that they are not wearing a face mask because they fall within a specified exception.

MiOSHA Emergency Rules (10/14/2020)



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MiOSHA Emergency Rules (10/14/2020)

- Source of Authority: Michigan Administrative Procedures Act of 1969
- Allows an agency to issue emergency rules where there is a clear and convincing need to preserve the public health, safety, and welfare
- Rules are in effect for six months; however, the Governor may extend the Rules for another six months
- Violation: Generally, up to \$7,000/violation

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MiOSHA Emergency Rules (10/14/2020)

- Establish Exposure Determination for Employees
- Create a COVID-19 Preparedness and Response Plan
- Establish Workplace Procedures for Isolating Sick Employees from the Workplace and Cleaning/Disinfecting
- Employee Training
- Industry-Specific Requirements

MiOSHA Emergency Rules (10/14/2020)

- Remote Work
- “The employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can **feasibly** be completed remotely.”

MiOSHA Emergency Rules (10/14/2020)

- When can't work activities be completed in a feasible manner?
- Employers must have a thoughtful, reasoned policy concerning this question.
 - MDHHS 11/6/2020 Guidance on Keeping Workplaces Safe:
 - A "strict requirement" for in-person work means that a worker is unable to physically complete required job tasks from a remote setting (e.g., like a food service or auto assembly worker, or a job involving protected data that cannot be accessed remotely).
 - It should not be construed as permitting in-person work solely because working remotely may result in decreased productivity or efficiency (i.e., because an employee may be more effective / efficient in person) or because of there may be additional costs related to performing work remotely (i.e., costs for equipment like laptops, VPNs, software licenses).
- MiOSHA will not focus on evaluating the business' judgment of feasibility, except for cases of obvious misapplication.

MiOSHA Emergency Rules (10/14/2020)

- Face Coverings
- Must be provided to employees at no cost;
- Must be required to be worn whenever employees cannot consistently maintain six feet of separation from others; and when employees are in “shared spaces,” including restrooms, hallways, and during in-person meetings.



MiOSHA Emergency Rules (10/14/2020)

- “Shared Spaces”
 - Accessible or utilized by multiple individuals at the same time;
 - 6 feet of separation cannot be maintained between individuals within the space
 - The space lacks physical barriers separating individuals from contact with each other during their presence in the space.
- MiOSHA has determined that in-person meetings in conference rooms fall within this definition, even when attendees are seated six feet apart.

MiOSHA Emergency Rules (10/14/2020)

- “Shared Spaces”
- Responsibly distanced (i.e., six feet apart) cubicle configurations where employees are separated by dividers are *not* shared spaces;
- However, employees in such arrangements must wear a mask whenever they leave their workstations.

MiOSHA Emergency Rules (10/14/2020)

- Health Surveillance
- Conduct a daily self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19, **together with, if possible, a temperature screening.**
- Physically isolate employees known or suspected to have COVID-19 from the remainder of the workplace
- When the employer learns of an employee, **visitor, or customer** with a known case of COVID-19, immediately notify the local public health department, and within 24 hours, notify any co-workers, contractors, or suppliers who may have come into contact with the infectious person.
 - This includes individuals *in addition to* “close contacts.”

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MiOSHA Emergency Rules (10/14/2020)

Recordkeeping and Training Requirements

- Employers must train employees on basic infection control measures; the proper use of PPE; the steps an employee must take to notify the employer of any symptoms of COVID-19 or a suspected/confirmed case of COVID-19; and how to report unsafe working requirements.
- Trainings and communications regarding basic infection control measures must be in the primary languages common in the employee population;
- For one year, employers must maintain records on screening, training, and notifications required when there is a confirmed case in the workplace.

MiOSHA Emergency Rules (10/14/2020)

- Health Surveillance
- Employees with a known or suspected case of COVID-19 may only return to the workplace after they are no longer infectious according to the latest guidelines from the CDC and they are released from any quarantine or isolation order by the local public health department.

House Bill 6032 (10/22/2020)

Effective retroactive to March 1, 2020

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HB 6032

- Prohibits employers from discharging, disciplining, or otherwise retaliating against employees who:
 - Remain away from work following their display of principal COVID-19 symptoms; their confirmed diagnosis of COVID-19; or their close contact with someone displaying principal symptoms of or confirmed to have COVID-19;
 - Oppose a violation of HB 6032; or
 - Reports health violations related to COVID-19;
- Permits employers to request that symptomatic employees get tested for COVID-19 (but does not permit employers to clear employees to return to work following a negative COVID-19 test);
- Requires symptomatic employees to make reasonable efforts to schedule a COVID-19 test within 3 days of receiving an employer's request to get tested



HB 6032

- Symptomatic or COVID-19 positive employees must remain away from work until:
 - 24 hours without a fever (without the use of fever-reducing medicine);
 - 10 days since the onset of symptoms (or, for asymptomatic employees, since specimen collection); and
 - An improvement in principal symptoms;
- *Most employees who have had “close contact” with a symptomatic or COVID-19 positive person must remain away from work until:*
 - 14 days have passed since the employee last had contact with the individual; or
 - If the employee had close contact with a symptomatic individual, the employee may return to work if the symptomatic individual receives a medical determination that they did not have COVID-19 at the time of the close contact with the employee.



HB 6032

- No “Critical Infrastructure” Exception under the Act’s Quarantine Requirement
- The Act permits a very limited class of workers to continue reporting to work following their potential exposure to COVID-19:
 - A health care professional;
 - A worker at a health care facility;
 - A first responder;
 - A child protective service employee;
 - A worker at a child caring institution;
 - A worker at an adult foster care facility;
 - A worker at a correctional facility;



HB 6032

The Families First Coronavirus Response Act provides Emergency Paid Sick Leave (EPSL) to employees who, among other reasons, “is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.”

Employees subject to HB 6032’s quarantine/isolation requirements are eligible for EPSL.



Questions?

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November 17 Webinar: Considerations for Remote Employees

November 20 Webinar: Managing Your Risk of COVID-19 Employment Litigation

December 1 Webinar: Data Solutions Planning for 2021