EXECUTIVE ORDER 2020-91 - NEW WORKPLACE RULES; EXECUTIVE ORDER 2020-92 - STAY HOME ORDER REVISED

On May 18, 2020, Governor Whitmer issued Executive Order 2020-91: "Safeguards to Protect Michigan's Workers from COVID-19", and Executive Order 2020-92: amending the "Stay Home" mandate.

Executive Order 2020-91

This Order **mandates extensive preparations, trainings, screening, protective equipment, social distancing and other requirements that apply to all Michigan workplaces where employees are permitted to work by executive order**. These requirements should be implemented as soon as possible, if not already in place, in preparation for the anticipated, gradual reopening of more business sectors and regions of Michigan (see discussion of Executive Order 2020-92 below).

All workplaces where employees are permitted to work **must, at a minimum, comply with the following requirements:**

a. **Develop a COVID-19 preparedness and response plan**, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the US Occupational Health and Safety Administration and available **here**. By June 1, 2020, or within two weeks of resuming in-person activities, whichever is later, a business's or operation's plan must be made readily available to employees, labor unions, and customers (via website, internal network, or hard copy).

b. Designate one or more worksite supervisors to implement, monitor, and report on the COVID-19 control strategies developed under subsection (a). The supervisor must remain on-site at all times when employees are present on site. An on-site employee may be designated to perform the supervisory role.

c. Provide COVID-19 training to employees that covers, at a minimum:

   1. Workplace infection-control practices.

   2. The proper use of personal protective equipment.

   3. Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.

   4. How to report unsafe working conditions.

d. Conduct a daily entry 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.

e. Keep everyone on the worksite premises at least six feet from one another to the maximum extent possible, including through the use of ground markings, signs, and physical barriers, as appropriate to the worksite.

f. Provide non-medical grade face coverings to their employees, with supplies of N95 masks and surgical masks reserved, for now, for health care professionals, first responders (e.g., police officers, fire fighters, paramedics), and other critical workers.

g. Require face coverings to be worn when employees cannot consistently maintain six feet of separation from other individuals in the workplace, and consider face shields when employees cannot consistently maintain three feet of separation from other individuals in the workplace.

h. Increase facility cleaning and disinfection to limit exposure to COVID-19, especially on high-touch surfaces (e.g., door handles), paying special attention to parts, products, and shared equipment (e.g., tools, machinery, vehicles).

i. Adopt protocols to clean and disinfect the facility in the event of a positive COVID-19 case in the workplace.

j. Make cleaning supplies available to employees upon entry and at the worksite and provide time for employees to wash hands frequently or to use hand sanitizer.

k. When an employee is identified with a confirmed case of COVID-19, within 24 hours, notify both:

   1. The local public health department, and

   2. Any co-workers, contractors, or suppliers who may have come into contact with the person with a confirmed case of COVID-19.

l. Follow Executive Order 2020-36, and any executive orders that follow it, that prohibit discharging, disciplining, or otherwise retaliating against employees who stay home or who leave work when they are at particular risk of infecting others with COVID-19.

m. Establish a response plan for dealing with a confirmed infection in the workplace, including protocols for sending employees home and for temporary closures of all or part of the worksite to allow for deep cleaning.

n. Restrict business-related travel for employees to essential travel only.

o. Encourage employees to use personal protective equipment and hand sanitizer on public transportation.

p. Promote remote work to the fullest extent possible.

q. Adopt any additional infection-control measures that are reasonable in light of the work performed at the worksite and the rate of infection in the surrounding community.

Employers must maintain a record of the requirements set forth in b, c and k above.

In addition, **all offices** where employees are permitted to work **must comply with the following requirements**:

a. Assign dedicated entry point(s) for all employees to reduce congestion at the main entrance.

b. Provide visual indicators of appropriate spacing for employees outside the building in case of congestion.

c. Take steps to reduce entry congestion and to ensure the effectiveness of screening (e.g., by staggering start times, adopting a rotational schedule in [that] only half of employees are in the office at a particular time).

d. Require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.

e. Increase distancing between employees by spreading out workspaces, staggering workspace usage, restricting non-essential common space (e.g., cafeterias), providing visual cues to guide movement and activity (e.g., restricting elevator capacity with markings, locking conference rooms).

f. Turn off water fountains.

g. Prohibit social gatherings and meetings that do not allow for social distancing or that create unnecessary movement through the office.

h. Provide disinfecting supplies and require employees wipe down their work stations at least twice daily. (i) Post signs about the importance of personal hygiene.

i. Disinfect high-touch surfaces in offices (e.g., whiteboard markers, restrooms, handles) and minimize shared items when possible (e.g., pens, remotes, whiteboards).

j. Institute cleaning and communications protocols when employees are sent home with symptoms.

k. Notify employees if the employer learns that an individual (including a customer, supplier, or visitor) with a confirmed case of COVID-19 has visited the office.

l. Suspend all nonessential visitors.

m. Restrict all non-essential travel, including in-person conference events.

In addition to the requirements set forth above, there are **specific additional or different requirements imposed upon the following types of businesses and/or workplaces**: outdoor work (same requirements as prior order), construction industry (same requirements as prior order), manufacturing facilities (same requirements as prior order), research laboratories (same requirements as prior order), retail stores (updated requirements in this Order), and restaurants and bars (new requirements in this Order). Please carefully review the Order which sets forth the specific regulations for these types of businesses and workplaces.

The Order indicates that all the above workplace requirements have the force and effect of agency rules, and "a failure to provide a workplace that is free from recognized hazards" will constitute a violation of MIOSHA, which will subject a business to penalties.

The Governor's full Executive Order 2020-91 can be found at:
https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-529474--,00.html.

Executive Order 2020-92

This Order effectively continues the "Stay at Home" order through May 28, with the **following changes**:

- Michigan is divided into eight separate regions.
- **Beginning on Friday, May 22 at 12:01 a.m., the following activities are permitted in Regions 6 and 8 only**: social gatherings of up to 10 people, reopening of retail stores, offices ("only to the extent such work is not capable of being performed remotely"), and restaurants and bars, with limited seating.
    - Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle and Emmet.
    - Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.
- All individuals are required to wear a face covering when in any enclosed public space, but may be required to temporarily remove it when entering for identification purposes, or while seated at a restaurant or bar (for those Regions in which in-person restaurant visits are permitted).

The Governor's full Executive Order 2020-92 can be found at:
https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-529476--,00.html.

This memo is intended only as a summary and general overview. If you have any questions or would like legal advice regarding the above or any other employment issue, please contact David Lawrence or Stacey DiDomenico.