

New MIOSHA Workplace Rules and Updated MDHHS Order



On May 24, 2021, the Michigan Occupational Safety & Health Administration ("MIOSHA") issued new "Emergency" Rules for the workplace, which completely supersede the existing October 14, 2020 rules, and went into effect **immediately**. The same day, the Michigan Department of Health and Human Services ("MDHHS") issued a further relaxed Gatherings and Face Mask Order which goes into effect on **June 1, 2021**. A summary of the key provisions of each order follows.

MIOSHA Workplace Rules

- The following requirements from the previous order are **no longer in effect**:
 - The **remote work requirement**.
 - The "exposure determination" levels (i.e., low, medium, high, very high).
 - The industry-specific guidance.
 - The requirement to notify the public health department of a positive case.
- The following requirements from the previous order **remain in effect**:
 - The requirement for employers to implement and maintain a COVID-19 preparedness and response plan.
 - The basic infection prevention measures (i.e., making hand sanitizer readily available, increased cleaning and disinfection of the workplace).
 - The daily employee health-screening protocol for onsite work.
 - Any workers with "suspected cases of COVID-19" should not be present at the workplace, and should not return until no longer infectious according to the CDC guidance then in effect.
 - The COVID-19 training requirement continues, and should also include information on available vaccines.
 - Employers should continue to notify affected employees, contractors or suppliers who may have come into "close contact" with an employee, customer or visitor with a known case of COVID-19.
- **Revised workplace controls**:
 - The employer must ensure that all employees, other than "fully vaccinated persons", remain at least 6 feet from one another "to the maximum extent feasible while on worksite premises".
 - All employees, **other than "fully vaccinated persons"**, must continue to wear face coverings if they cannot maintain a distance of at least 6 feet of separation.
 - Note, however, that fully vaccinated persons must wear face masks in healthcare settings where patients may be present, and when using airplane or public transportation, if required by CDC guidance.
 - In order to comply with these workplace controls, **employers may do any of the following**:
 - (a) Keep records of whether employees are fully vaccinated persons, and exempt them from social distancing and face mask rules noted above;
 - (b) Post signs in the work area reminding employees that are not fully vaccinated to wear face coverings and maintain appropriate distancing;
 - (c) Allow or require remote work; **and/or**
 - (d) Continue to require face coverings and social distancing for all employees, regardless of vaccination status.

- **The employer should continue to keep records of the following for a period of six months:**
 - COVID-19 employee training.
 - Health-screening protocols.
 - Records of which employees have been vaccinated (IF the employer is relying on such information per the workplace control subsection (a) above).
- **Definition changes:**
 - The definition of "close contact" is changed to be as defined by the latest CDC guidelines in effect at the time.
 - The CDC guidelines are also used to define the symptoms of COVID-19.
 - "Suspected cases of COVID-19" means "persons who have symptoms of COVID-19 but have not been confirmed through diagnostic testing or unvaccinated persons who have had close contact with a person who has been confirmed through diagnostic testing to have COVID-19."
 - "Fully vaccinated persons" means "persons for whom at least 2 weeks have passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine."

The new MIOSHA Rules **remain in effect until October 14, 2021**. You can view the full [Emergency Rules here](#).

MDHHS Order

Unless noted, all other requirements from prior orders remain in effect.

- There are **no longer any gathering limits or mask requirements** for any **residential gatherings**, indoor or outdoor.
- The **indoor gathering limits for establishments** are the **greater of** (i) **50%** of the limits established by the Fire Marshal (or 30 persons per 1,000 sq. ft. if no applicable limits exist); or (ii) **25 persons**.
 - The definition of "establishment" was changed slightly, and is now defined as "a business, store, office, government office, school, organized event, public transit service, or other public or private operation or facility where gatherings may occur." However, it does not include private residences.
 - Note that there are exceptions to this requirement, as detailed in section 2(b) of the Order, including, as has been the case, "workplace gatherings" consistent with MIOSHA rules.
 - The establishment, host and person(s) organizing the gathering are responsible for ensuring that gatherings comply with this Order.
- There are **no restrictions for outdoor gatherings for establishments** (i.e., there are no longer limits on the number of patrons at outdoor venues or facilities).
- The indoor face mask requirement continues, however with the same exceptions set forth in the prior Order (including the exceptions for "fully vaccinated individuals").
- **Food service establishments** (as defined in the Food Law Act) must continue to maintain records detailing date and time, names of patrons and contact information of patrons, however, food service establishments are **no longer required to deny entry** to any patron who refuses to provide such information.



This latest MDHHS Order **remains in effect through July 1, 2021**. You can view the full [Order here](#).

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](#).