

[Rescission of MIOSHA Emergency COVID Rules, For All But Healthcare](#)

On June 22, 2021, the Michigan Occupational Safety and Health Administration ("MIOSHA") **rescinded the many COVID-related restrictions and rules for all workplaces, other than "healthcare employers"**. This includes the requirements for remote work, face coverings, daily screening questionnaire, COVID Response Plan, etc., regardless of the employee's vaccination status. MIOSHA accomplished the rescission by issuing the new [Emergency Rules](#), which completely supersede the revised requirements issued on May 24, 2021, while preserving many of the requirements for healthcare employers (see below). Employers may now "use their **best judgment**" in determining whether they should continue to require daily health screenings, face coverings and social distancing.



Note, however, the long standing MIOSHA requirement that all employers have a **general duty** to provide employees with "a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee" remains in effect. See MCL 408.1011(a). MIOSHA could certainly apply the general duty to find violations based on a lack of COVID protocols at employers with COVID exposure problems. Accordingly, employers are encouraged to review the federal OSHA guidelines [Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#), to determine how to best proceed.

OSHA **recommends** that physical distancing and face coverings continue to be implemented by the employer for unvaccinated and at-risk workers. If an unvaccinated worker comes into close contact with someone with a confirmed case of COVID-19, or has COVID-19 symptoms, the worker should not come back to the workplace until 10 days from the date of last contact or a positive test was taken, and the worker has been fever-free for at least 24 hours. Employers should also respect an employee's decision to continue wearing a face covering, whether or not he or she is vaccinated, and respect any physical distancing requests from an employee. Employers are free to continue all or some of the previously required COVID restrictions/protocols for the unvaccinated or all employees, especially if they are in a public facing establishment.

Additionally, despite the rescission of requirements, employees can still bring claims alleging violations during the period the requirements were in effect. Accordingly, employers should keep the following records for not only six months, as was required by the May 24 Rules, but three years: (i) COVID-19 employee training, including a copy of the COVID-19 Response Plan; (ii) health-screening protocols; (iii) records of employee exposure, positive cases; and (iv) records of which employees have been vaccinated (if the employer was relying on such information per the May 24 workplace control rules).

"Healthcare employers" must follow the federal OSHA [Emergency Temporary Standard](#) ("ETS") published June 21, 2021. The ETS applies to "all settings where any employee provides healthcare services or healthcare support services". The ETS mandates daily screenings, PPE, a COVID-19 response plan, paid leave requirements in certain circumstances for employees, physical distancing, and enhanced cleaning, sanitizing and ventilation. The [OSHA ETS flow chart](#) can help determine whether a healthcare employer is subject to the ETS. The MIOSHA Emergency Rules for healthcare employers, mandating the above, remain in effect until December 22, 2021.

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](#).