

MIOSHA Issues Emergency Rules, Further Reinstating COVID-19 Workplace Safeguards

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The Michigan Occupational Safety and Health Administration (“MIOSHA”) is tasked with enforcing the duty of every Michigan employer to provide “employment and 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.”

For several months, employers looked to the expanding Executive Orders issued by Governor Whitmer to define the precautions that were necessary for the provision of a safe workplace in light of the COVID-19 pandemic. However, earlier this month, the Michigan Supreme Court invalidated the Executive Orders released after April 30, 2020, concluding that the statute from which Governor Whitmer derived her authority was unconstitutional.

This left many employers wondering what guidance to follow. Several counties quickly responded by issuing local orders. Wayne County, for example, issued a local order explicitly incorporating several of the Executive Orders. Also, the Michigan Department of Health and Human Services promulgated an epidemic order, limiting gatherings, re-imposing capacity restrictions, outlining key workplace protections, and mandating masks, as appropriate.

MIOSHA, under its statutory authority, has now, by administrative rule, re-imposed and clarified the required workplace safeguards in its Emergency Rules, released on October 14, 2020. These Rules adopt many components of the former Executive Orders. Importantly, employers must:

- Classify their employees’ level of risk exposure (i.e., lower, medium, high, or very high);
- Develop, implement, and make readily available Preparedness and Response Plans, addressing engineering and administrative controls;
- Identify “COVID-19 safety coordinators” to implement and report on the Preparedness and Response Plan;
- Establish cleaning and disinfecting procedures;
- Prohibit in-person work “for employees to the extent that their work activities can feasibly be completed remotely”;

- Conduct daily entry health screenings covering symptoms of COVID-19, suspected or confirmed exposure to people with possible COVID-19, and a temperature screening, “if possible”;
- Notify the local public health department of a confirmed case, as well as employees, contractors, and suppliers “who may have come into contact with the person with a known case of COVID-19”;
- Follow guidance from the Centers for Disease Control and Prevention (“CDC”) to determine when an employee may discontinue quarantine or isolation;
- Require face coverings when in shared spaces (e.g., in-person meetings, restrooms, hallways) and when unable to “consistently maintain” six feet of separation;
- Provide employees with appropriate personal protective equipment (“PPE”);
- Abide by industry-specific requirements (i.e., construction, manufacturing, retail, restaurants, health care, in-home services, personal-care services, public accommodations, sports and exercise facilities, meat processing, casinos);
- Train employees on infection-control practices, proper PPE usage, and notification and reporting procedures; and
- Retain records related to training, screening protocols, and notifications for at least one year from the date of generation.

Employers who made their worksites compliant with Executive Order 2020-184 before its rescission are generally compliant with MIOSHA’s Emergency Rules. There are, however, a few key differences:

- Regarding remote work, the Executive Order standard was that “any work capable of being performed remotely . . . must be performed remotely,” while the new MIOSHA standard requires employers to prohibit “in-person work for employees to the extent that their work activities can feasibly be completed remotely”;
- Industry-specific requirements are significantly less detailed than those contained within the Executive Orders; and
- The Emergency Rules define the duration of the records retention obligation (i.e., one year).

Employers should contact any member of **Bodman’s Workplace Law Group** to ensure that their current COVID-19 policies and procedures comply with MIOSHA’s Emergency Rules, recent local and state public health orders, and CDC guidance. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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