

### Rising COVID-19 Cases Prompt Stricter Rules from MDHHS

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The Michigan Department of Health and Human Services (“MDHHS”) issued new and stricter requirements affecting Michigan businesses. Effective November 18, 2020, through at least December 8, 2020, employers must adjust their COVID-19 policies and procedures to comply with MDHHS’s Epidemic Order.

Gathering Restrictions for Particular Facilities. Gatherings include any indoor or outdoor meetings where two or more persons from more than one household are present in a shared space.

- Gatherings at entertainment venues (banquet halls, conference centers, sporting venues, theaters, stadiums) and recreation facilities (casinos, nightclubs, amusement parks) are prohibited.
- Gatherings at food service establishments (restaurants, coffee shops, bars) are prohibited unless the gathering is outdoors and tables are at least six feet apart (with limited exceptions for schools, soup kitchens, medical facilities).
- Retail stores, libraries, and museums must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal.
- Exercise facilities must not exceed 25% total occupancy limits established by the State Fire Marshal or a local fire marshal. Group fitness activities or classes are prohibited.
- Non-essential personal care services (hair, nail, tanning, massage, tattoo) are only permitted to the extent removal of a face mask is not required. Any service must be by appointment. Gatherings in waiting areas are prohibited.

Remote Work. Employers should continue to comply with the Emergency Rules issued by the Michigan Occupational Safety and Health Administration on October 14, 2020. In particular, employers must prohibit in-person performance of work that can “feasibly” be completed remotely. For more information, see Bodman’s E-Alert, “MIOSHA Releases New Guidance, Requiring COVID-19 Remote Work Policies, and Promising to Enforce its Feasibility Rule.”

### Schools, Colleges, and Universities.

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- Grades Pre-K – 8. Gatherings at public, nonpublic, and boarding schools to conduct in-person instruction are permitted. Gatherings to conduct sports and extracurricular activities are prohibited.
- Grades 9 – 12. Gatherings at public, nonpublic, and boarding schools to conduct in-person instruction, sports, and extracurricular activities are prohibited.
- Colleges and Universities. Gatherings to hold in-person classes and extracurricular events are prohibited (unless MDHHS' Additional Mitigation Measures for Safer Athletic Practice and Play is followed).

Face Masks are still Required. Any person responsible for a business, store, office, government office, school, organized event, or other operation must deny entry or service to any individual (including employees) not wearing a face mask. An individual's verbal representation that they are not wearing face mask because they fall within a specified exception (i.e., cannot medically tolerate a face mask) may be accepted. If an employee refuses to wear a face mask, an employer should first determine whether the employee is a qualified individual with a disability entitled to a reasonable accommodation under the Americans with Disabilities Act.

Contact Tracing Requirements. Businesses, where employees or customers are present, must maintain accurate records including date and time of entry, name of individual, and contact information for all individuals entering or using their facilities. The information should be securely stored for 28 days after collection, and it must not be sold or used for sales or marketing purposes. Employers should be prepared to provide this information upon request to MDHHS and/or local health departments to aid in contact tracing and case investigation.

Businesses specifically subject to the contact tracing requirement include: businesses that offer personal care services (i.e. cosmetology, body art, tanning, massage), exercise facilities, and operations that provide in-home services (i.e. cleaners, painters, repair persons).

For employers, the MDHHS Epidemic Order has varying effects: capacity restrictions should be incorporated into Preparedness and Response Plans; business limitations may necessitate layoffs; employees suddenly faced with child care disruptions may seek leave under the Families First Coronavirus Response Act; and, remote or in-person job classifications require delineation in COVID-19 Remote Work Policies. Employers should contact any member of Bodman's Workplace Law Group to manage the effects of this latest Order.

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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