

## NEW ORDER IMPOSES SAFEGUARDS ON MICHIGAN WORKPLACES IN ATTEMPT TO PROTECT MICHIGAN'S WORKERS FROM COVID-19

On May 18, 2020, Governor Whitmer issued **Executive Order 91** (the "Order"), effectively creating an enforceable set of workplace standards applying to all businesses across the state.<sup>[i]</sup> In addition to standards set for all business, the new Order provides standards for workplace environments, such as offices and research laboratories.<sup>[ii]</sup> Per the Order, any Michigan business or operation that violates *any* of these new standards, will have "failed to provide a place of employment that is free from recognized hazards" within the meaning of the Michigan Occupational Safety and Health Act ("MIOSHA").<sup>[iii]</sup> Thus, Michigan businesses back in operation must do the following:

### CREATE PROTOCOLS/PLANS/STRATEGIES

1. Develop a COVID-19 "preparedness and response plan" consistent with OSHA requirements. The Plan must be in writing and available to employees, unions and customers via website, internal network or by hard copy by June 1, 2020 or within 2 weeks of resuming in-person activities, whichever is later.
2. Designate supervisors to implement, monitor and report on the COVID-19 control strategies required under the new Order. The supervisor must remain on site whenever there are employees present on site.
3. Create and adopt a protocol 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 cleaning.
4. Create and adopt protocols to clean and disinfect the workplace in the event of a positive COVID-19 case.
5. Adopt 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.

### PROTECTIVE SAFETY MEASURES, EQUIPMENT AND TRAINING

6. Provide employees with COVID-19 Safety training covering (i) infection control practices; (ii) how to use personal protection equipment; (iii) how to report unsafe working conditions; and (iv) how to report any symptoms or suspected or confirmed diagnosis of COVID-19.
7. Conduct daily entry screening protocols, which at a minimum should include questionnaires covering symptoms and suspected exposure.
8. Maintain at least 6 feet social distancing to the extent possible, including through the use of ground markings, signs and physical barriers, as appropriate to the worksite.
9. Provide non-medical-grade face coverings to employees (unless they are health care professionals, first responders or other critical workers).
10. Require face coverings to be worn when employees cannot consistently maintain 6 feet of separation from other individuals in the workplace. Face shields should be considered if employees cannot consistently maintain 3 feet of separation from other individuals in the workplace.
11. Increase facility cleaning and disinfection to limit exposure to COVID-19, especially on high-touch surfaces (e.g., door handles).
12. Promote remote work to the fullest extent possible.
13. 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.
14. Furthermore, all **offices** must:
  - Assign dedicated entry point(s) for all employees to reduce congestion at the main entrance.

- Provide visual indicators of appropriate spacing for employees outside the building in case of congestion.
- Take steps to reduce entry congestion (e.g., by staggering start times, adopting a rotational schedule in which only half of employees are in the office at a particular time) and ensure the effectiveness of screening.
- Require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.
- Increase distancing between employees by spreading out workspaces, staggering workspace usage, restricting non-essential common space (i.e., cafeterias), providing visual cues to guide movement and activity (e.g., restricting elevator capacity with markings, locking conference rooms).
- Turn off water fountains.
- Prohibit social gatherings and meetings that do not allow for social distancing or that create unnecessary movement through the office.
- Provide disinfecting supplies and require employees wipe down their work stations at least twice daily as well as disinfect high-touch surfaces (i.e., whiteboard markers, restrooms, handles) in offices and minimize shared items (i.e., pens, remotes, whiteboards) when possible.
- Notify employees if the employer learns an individual (including a customer, supplier, or visitor) with a confirmed case of COVID-19 has visited the office.

## REPORTING POSITIVE CASES OF COVID-19

15. When an employee is identified with a confirmed case of COVID-19, within 24 hours notify both: the local public health department and any coworkers, contractors or suppliers who may have come into contact with the person.

## PRACTICAL TAKEAWAYS

- Compliance with the Governor's new workplace standards is not on the honor system. To the contrary, employers are *mandated* under the Order to maintain records of their compliance with those requirements involving (i) trainings provided to employees; (ii) screenings performed of individuals upon entry to the workplace; and (iii) notifications made to local public health departments and others in the event of a confirmed case of COVID-19.
- While many Michigan employers are already implementing numerous safety measures as they re-open, compliance failures regarding *all* of these enumerated standards may lead to MIOSHA violations and a finding that the workplace is unsafe for employees.

If you have any questions, please contact:

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Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources at our [COVID-19 Resource page](#), through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

*Hall Render blog posts and articles are intended for informational purposes only. For ethical reasons, Hall Render attorneys cannot—outside of an attorney-client relationship—answer specific questions that would be legal advice.*

[references]

[i] This order replaces what was formerly Section 11 of Executive Order 2020-77.

[ii] Additional workplace locations include retail stores, restaurants, bars, manufacturing facilities, construction, and business operations conducted outside.

[iii] MCL 408.1011

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