

Complying with the COVID-19 Response and Reopening Liability Assurance Act



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Presentation Outline

- MDHHS Epidemic Orders and Executive Orders
- MIOSHA Emergency Orders and CDC Guidelines
- COVID-19 Response and Reopening Liability Assurance Act and Safe Harbors
- Future State and Hypotheticals

Michigan Department of Health and Human Services – Epidemic Orders



The revolving door that will continue to spin as we navigate the Covid-19 Pandemic

General Overview

- To date, the MDHHS has issued a total of 31 different Epidemic Orders
- Of these 31 Orders, 12 have since been rescinded
- Many of the rescinded Orders still impact potential Covid-19 claims since the claims relate back to the date of the “exposure”
- Making sure you complied with the Orders in place on the date of the exposure is key to optimizing protection

Epidemic Orders

March 23 – Reporting Covid-19 Test Data	June 3 – Hospital Visitation	September 10 – Exceptions to Restrictions on Entry into residential Care Facilities	October 20 – Schedule of Fines for Violation
April 2 – Reinforcing Executive Orders	June 10 – Reinforcing Executive Orders	September 14 – Mandatory Testing for MDHHS Hospitals/ Centers Staff	October 21 – Residential Care Requirements
April 4 – Funeral Director Reporting	June 15 – Nursing Home Testing	September 21 – Mandatory Testing for MDHHS Juvenile Justice Staff	October 26 – Rescission of Emergency Orders
April 28 – Safe Housing for Michigan Homeless	June 29 – Visitation at Juvenile Justice Facilities	October 5 – Gathering/Mask Order	October 28 – Testing in Skilled Nursing Facilities
May 4 – Handling Bodily Remains	June 30 – Nursing Home Visitation	October 6 – Requirements Residential Care	October 29 – Restriction on Entry to Juvenile Justice Facilities
May 18 – Reinforcing Executive Orders	June 30 – Reinforcing Executive Orders	October 6 – Restriction on Entry to Juvenile Justice Facilities	October 29 – Gathering/Face Mask Order
May 22 – Emergency Order Safe Housing for Unstable Individuals	August 14 – Mandatory Testing, Prevention and Safe Housing for Agricultural Workers	October 6 – Reporting COVID – 19 Cases at Schools	November 18 – Gathering/Face Mask Order
May 27 – Reinforcing Executive Orders	August 19 – Prison Testing	October 9 – Gathering/Face Covering Order	

Epidemic Orders

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May 27 – Reinforcing Executive Orders	August 19 – Prison Testing	October 9 – Gathering/Face Covering Order	<u>*Designates Rescission of Order</u>

MDHHS Orders Applicable to BOMA

- April 2, 2020 – Reinforcing Executive Orders 2020-11, 2020-20 and 2020-21 (Rescinded October 26, 2020)
- May 18, 2020 – Reinforcing Executive Orders 2020-69, 2020-71, 2020-91 and 2020-92 (Rescinded October 26, 2020)
- May 27, 2020 – Reinforcing Executive Orders 2020-69, 2020-71, 2020-96 and 2020-97 (Rescinded October 26, 2020)
- June 10, 2020 – Reinforcing Executive Orders 2020-110, 2020-114 and 2020-115 (Rescinded October 26, 2020)
- July 30, 2020 – Reinforcing Executive Orders 2020-153, 2020-160 and 2020-161 (Rescinded October 26, 2020)
- October 5, 2020 – Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order (Rescinded October 9, 2020)
- October 9, 2020 - Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order (Rescinded October 29, 2020)
- October 20, 2020 – Emergency Order Under MCL 333.2253 – Schedule of Fines for Violation of Emergency Orders (Remains in effect for 6 months)
- October 26, 2020 – Rescission of Emergency Orders Reinforcing Executive Orders
- October 29, 2020 - Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order (Rescinded November 18, 2020)
- November 18, 2020 - Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order (Remains in effect until December)

April 2, 2020 – Reinforcing Executive Orders 2020-11, 2020-20 and 2020-21

- Remained in effect from April 2, 2020 until October 26, 2020
- MDHHS states that EVERY person in Michigan **must** comply with Executive Orders 2020-11, 2020-20 and 2020-21 as signed by Governor Gretchen Whitmer
 - Executive Order 2020-11 – Restriction on large assemblages and events, temporary school closures, all events more than 50 people prohibited
 - Executive Order 2020-20 – Restaurants, bars, gyms, lounges, theaters, casinos closed
 - Executive Order 2020-21 – Stay at home Order, no working outside of home unless job entails sustaining life or to conduct minimum business operation (must designate individuals)
 - Social distancing, restrict number of people present to no more than what is necessary, increase facility cleaning, protocol is positive COVID-19 test,
- Local health departments to carry out and enforce the Order

May 18, 2020 – Reinforcing Executive Orders 2020-69, 2020-71, 2020-91 and 2020-92

- Remained in effect from May 18, 2020 until October 26, 2020
- MDHHS states that EVERY person in Michigan **must** comply with Executive Orders 2020-69, 2020-71, 2020-91 and 2020-92 as signed by Governor Gretchen Whitmer
 - Executive Order 2020-69 – Restriction on places of public accommodation, extends bar/restaurant restrictions
 - Executive Order 2020-71 – Outlines Safety measures for grocery stores/pharmacies
 - Executive Order 2020-91 – Safeguards to protect Michigan Workers, **Preparedness Plan**
 - Executive Order 2020-92 – Reaffirms measures regarding restrictions on operations not sustaining life
- Local health departments to carry out and enforce the Order

Preparedness Plan Essentials

- Follow guidance from OSHA on developing your response plan
- Designate one person to implement, monitor, and report on COVID-19 control strategies
- Provide COVID-19 training to employees on infection control, use of PPE, notification process and reporting unsafe conditions
- Daily self-screening protocol (Questionnaire/QR code development)
- 6 feet social distancing
- Provide non-medical face coverings and require them to be worn when social distancing cannot be maintained
- Increase facility cleaning and disinfection, especially at touch points
- Make cleaning supplies available
- If positive test, notify local public health department and other co-workers who may have come into contact with infected individual
- Establish response plan if a positive test occurs
- Restrict business related travel
- Adopt any other reasonable procedure necessary

***Requirements very slightly depending on industry involvement**

May 27, 2020 – Reinforcing Executive Orders 2020-69, 2020-71, 2020-96 and 2020-97

- Remained in effect from May 27, 2020 until October 26, 2020
- MDHHS states that EVERY person in Michigan **must** comply with Executive Orders 2020-69, 2020-71, 2020-96 and 2020-97 as signed by Governor Gretchen Whitmer
 - Executive Order 2020-69 – Restriction on places of public accommodation, extends bar/restaurant restrictions
 - Executive Order 2020-71 – Outlines Safety measures for grocery stores/pharmacies
 - Executive Order 2020-96 – Reaffirming stay at home Order
 - Executive Order 2020-97 – Amends previous Safeguard Order to include new provisions governing outpatient health-care facilities
- Local health departments to carry out and enforce the Order

June 10, 2020 – Reinforcing Executive Orders 2020-110, 2020-114 and 2020-115

- Remained in effect from June 10, 2020 until October 26, 2020
- MDHHS states that EVERY person in Michigan **must** comply with Executive Orders 2020-110, 2020-114, and 2020-115 as signed by Governor Gretchen Whitmer
 - Executive Order 2020-110 – Temporary restrictions on events, gatherings and businesses
 - Any business requiring employees to leave their home must comply with Safeguards Order
 - Everyone must wear facemasks covering nose/mouth
 - Business/building owners can deny access for failure to follow without being subject to claims for denying access
 - Executive Order 2020-114 – Extend stay at home order and amending previous safeguard standards to include gym, personal care services, sport venues and in-home care services
 - Executive Order 2020-115 – restrictions on events, gatherings and businesses
 - Reopen personal care services with gathering restrictions
- Local health departments to carry out and enforce the Order

July 30, 2020 – Reinforcing Executive Orders 2020-153, 2020-160 and 2020-161

- Remained in effect from July 30, 2020 until October 26, 2020
- MDHHS states that EVERY person in Michigan **must** comply with Executive Orders 2020-153, 2020-160, and 2020-161 as signed by Governor Gretchen Whitmer
 - Executive Order 2020-153 – Mask requirement for everyone leaving their home and 6 feet social distancing cannot be maintained
 - Executive Order 2020-160 – Amendment to Safe Start Order, any business/operation must comply with Safeguard Order
 - Executive Order 2020-161 – New Safeguard Order to protect Michigan Workers
- Local health departments to carry out and enforce the Order

Executive Order 2020-161 - Safeguards

- Develop preparedness/response plan consistent with OSHA Guidance and Preparing Workplaces for COVID-19
- Designate individual to implement, monitor and report COVID-19 control strategies
- Provide training to employees on workplace infection control practice and PPE, steps employees take to report suspected/confirmed diagnosis, how to report unsafe conditions
 - Place posters encouraging employees to stay at home if they are feeling sick
- Conduct daily self screening for anyone entering the building
- Keep everyone socially distanced, marking ground/wall to indicate proper distancing
- Provide and require face masks
- Increase facility cleaning
- Establish response plan when positive case arises
- Restrict business related travel
- Encourage use of PPE
- Adopt additional reasonable measures in light of infection rate in the surrounding community

Confirmed Case of COVID-19

- Immediately notify public health officials
- Within 24 hours, notify any co-worker who may have come into contact with person
- Return to workplace only after no longer infectious according to guidance from the CDC
- Prohibits discharging, disciplining or otherwise retaliating against employees who stay at home or leave work when they are at particular risk of infecting others

Office Spaces

- Assign dedicated points of entry for all employees to reduce congestion at main entrance
- Provide visual indicators of appropriate spacing for employees outside the building in case of congestion
- Take steps to reduce entry congestion and ensure effectiveness of screening
 - Staggering start times, adopting a rational schedule whereas only have of the employees are in the office at a particular time
- Increase distancing between employees by spreading out workplace, staggering workplace usage (copy/printer areas), provide visual cues to guide movement and activity, and restrict non-essential common space
- Prohibit social gatherings/meetings that do not allow social distancing, use Zoom.
- Provide disinfecting supplies and require employees to wipe down work space twice daily
- Post signs on the importance of personal hygiene
- Disinfect common touch points
- Notify employees if employer learns of a positive COVID-19 test
- Suspend non-essential visitors

October 5, 2020 – Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order

- Remained in effect from October 5, 2020 until October 9, 2020
- Set restrictions and limitations on gatherings
 - Indoor gatherings up to 10 people at a residence (face mask recommended)
 - Indoor gatherings up to 10 people at a non-residence (face mask required)
 - Indoor Gatherings between 10 and 500 people permitted at non-residential venue if:
 - Fixed Seating venues – limit attendance to 20% maximum seating capacity (face mask required)
 - Without fixed seating – limit attendance to 20 persons per 1,000 square feet (face mask required)
 - Outdoor gatherings up to 100 people at a residence (face mask recommended)
 - Outdoor gatherings up to 100 people at non-residential venue (face mask required)
 - Outdoor gatherings between 100 and up to 1,000 people are permitted if:
 - Fixed Seating Venues – limit attendance to 30% of seating capacity (face mask required)
 - Without fixed seating – 30 persons per 1,000 square feet (facemask required)
- Businesses, government offices and other “operations” must not allow indoor gatherings unless they require individuals to wear a face mask
- If someone enters without a mask, you must inquire whether they fall into one of the exceptions

Exceptions to Wearing a face Mask

- Younger than 5 years old
- Cannot medically tolerate face mask
- While eating/drinking at food service establishment
- Exercising outdoors while keeping social distance
- Are entering a business or receiving a service that requires removal for identification purposes
- Are officiating or engaging in religious services
- Polling place

October 9, 2020 – Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order

- Remained in effect from October 9, 2020 until October 29, 2020
- Redefined restrictions and limitations on gatherings, although prior restrictions related to indoor/outdoor gatherings remained unchanged
- Put in place for the protection of workers
 - Gathering of employees in the workplace is **prohibited** under any of the following circumstances;
 - If not strictly necessary to perform job duties
 - If employees not otherwise required to wear a mask cannot maintain 6 feet social distancing
 - If employees not otherwise required to wear a mask occupy the same indoor space (conference rooms, restrooms, hallways)
 - Employees required to quarantine must remain isolated at home until advised by a health professional that they may return or the following conditions are met:
 - 24 hours have passed since resolution of fever
 - 10 days have passed since symptoms first appeared or after a positive test
 - Other symptoms have improved

Emergency Order Under MCL 333.2253 – Schedule of Fines for Violation of Emergency Orders

- Remain in effect from October 20, 2020 until April 20, 2021
- Violation of the October 9, 2020 Emergency Order, or any amendments of that Order, is subject to a penalty of \$1,000 for each violation or day that violation continues
- Violation of an Epidemic Order issued under section 2253 of the public health code, for the purpose of addressing COVID-19 is subject to a penalty of \$1,000 for each violation or day that violation continues

October 26, 2020 – Rescission of Emergency Orders Reinforcing Executive Orders

- On October 9, 2020, the Michigan Supreme Court ruled that the Executive Orders issued by Governor Gretchen Whitmer under the Emergency Powers of Governor Act were struck down
- In total, there were seven Emergency Orders executed by the Michigan Department of Health and Human Services which we meant to reinforce Governor Gretchen Whitmer's Executive Orders
- Each of the seven Emergency Orders signed by MDHHS were rescinded as a result of the Supreme Court Decision

October 29, 2020 - Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order

- Was in effect from October 29, 2020 until November 18, 2020
- Redefined restrictions and limitations on gatherings, are only permitted as follows:
 - Indoor gatherings with 10 or fewer people at a residence
 - Indoor gatherings with 50 or fewer people at a non-residential venue without fixed seating, and attendance is limited to 20 people per 1,000 square feet (face mask required)
 - Indoor Gatherings with 500 or fewer people permitted at non-residential venue with fixed seating, and attendance is limited to 20% seating capacity of the venue (mask required):
 - Outdoor gatherings with 100 or fewer people at a residence
 - Outdoor gatherings with 1,000 or fewer people at non-residential venue without fixed seating and attendance is limited to 30 people per 1,000 square feet (face mask required)
 - Outdoor gatherings with 1,000 or fewer people at non-residential venue with fixed seating and attendance is limited to 30% seating capacity (face mask required)

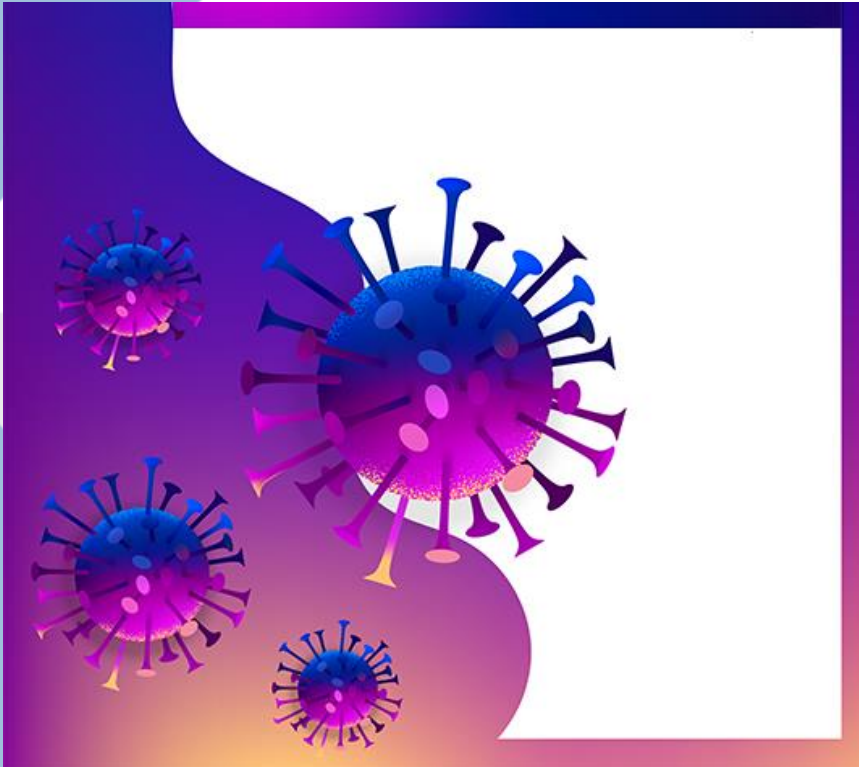
Face Mask Requirements and Contact Tracing

- Face masks are required for ANY non-residential gathering, and are strongly recommended for residential gatherings
- A person responsible for a business, store, office, school, government office, organized event, or other operation must prohibit gatherings of any kind unless the person in charge requires the use of face masks and denies entry to those who do not abide
- If you come into contact with person without a mask, you must inquire whether he/she falls into one of the exceptions, verbal representation is satisfactory
- Upon request, businesses and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing efforts

November 18, 2020 - Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order

- Current order that remains in effect until December 8, 2020
- Set new limitations on gatherings for the next three weeks
 - Indoor gatherings in homes are prohibited except when no more than 10 people from two different households
 - Indoor non-residential gatherings are prohibited
 - Outdoor gatherings at a residence are permitted so long as they are less than 25 people from no more than 3 households
 - Outdoor gatherings at non-residential venues permitted where 25 or fewer people are gathered at a venue **without** fixed seating and attendance is limited to 20 people per 1,000 square feet
 - Outdoor gatherings at non-residential venues permitted where 25 or fewer people are gathered at a venue **with** fixed seating and attendance is limited to 20% seating capacity
- Face masks are required for all people participating in a gathering
- As a condition for hosting a gathering under this Order, organizers must make sure social distancing a priority and make sure those people not from the same household remain 6 feet apart

Michigan Occupational Safety and Health Administration – COVID 19 Emergency Rules



- Issued October 14, 2020
- Applies to all employers in the Michigan occupational safety and health act
- Requires employers to categorize each job into risk categories
- Requires employers to develop a COVID-19 preparedness and response plan consistent with CDC and OSHA

Risk Categories

- **Low Risk Work:**
 - Requires minimal contact with the public and other coworkers.
- **Medium Risk Work:**
 - Requires frequent or close contact with the public, including people who may be infected with COVID-19, but who are not known or suspected COVID-19 patients.
 - Examples: schools, high-population-density work environments, high-volume retail settings.
- **High/Very High Risk Work:**
 - High potential for exposure to known or suspected sources of COVID-19.
 - Examples: health care professional, first responders, nursing home employees, law enforcement, correctional officers, mortuary workers.

Workplace Controls



- Designate COVID-19 safety coordinator
- Provide training to employees on COVID-19
- Daily self-screening protocol
 - Questionnaire covering symptoms and suspected or confirmed exposure to people with COVID-19 and, if possible, temperature screening
- Maintain 6 feet between employees
- Face Coverings:
 - The employer shall provide non-medical grade face coverings to their employees at no cost to the employee.
 - The employer shall require face coverings to be worn when employees cannot consistently maintain 6 feet of separation from other individuals in the workplace and **consider face shields** when employees cannot consistently maintain 3 feet of separation from other individuals in the workplace.
 - The employer shall require face coverings in **shared spaces**, including during in-person meetings and in restrooms and hallways.

Remote Work

- Remote work Rule: **The employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely.**
- MIOSHA will accept a written policy which indicates that employees are not to perform in-person work activities where the work activity can be feasibly completed remotely.
- Employers are obligated to demonstrate infeasibility of remote work.
- Employers should include in the remote work determination information which covers at least:
 - Which positions/classifications report for in-person work and why they must be physically present in the workplace.
 - Reasons that this work cannot be performed remotely, this must include enough specificity to show this analysis has been performed.
- This written policy may be part of the employer's COVID-19 preparedness and response plan. It does not have to be a stand-alone document.

Quarantine & Isolation



- **Rule: The employer shall physically isolate any employees known or suspected to have COVID-19 from the remainder of the workforce**, using measures such as, but not limited to:
 - (a) Not allowing known or suspected cases to report to work.
 - (b) Sending known or suspected cases away from the workplace.
 - (c) Assigning known or suspected cases to work alone at a remote location (for example, their home), as their health allows.
- When an employer learns an employee has COVID-19, the employer shall:
 - Immediately notify the local public health department, and
 - Within 24 hours, notify any co-workers, contractors or suppliers who may have come into contact with the person with
- Employees with known or suspected COVID-19 may return to the workplace in accordance with CDC guidelines:
 - Quarantine (non-confirmed, no symptoms) 14 days from the date of the last close contact.
 - Isolation (symptoms or confirmed with or without symptoms):
 - At least 10 days since symptoms first appeared and
 - At least 24 hours with no fever without fever-reducing medication and
 - Other symptoms of COVID-19 are improving
 - Loss of taste and smell may persist for weeks or months after recovery and need not delay the end of isolation

Recordkeeping Requirements

- **Employers must maintain a record of the following:**
 - COVID-19 employee training.
 - Daily screenings for each employee or visitor entering the workplace.
 - Notifications to the local public health department of known COVID-19 cases.
 - Notifications to co-workers, contractors, and suppliers of known COVID-19 cases.
- **Employers must maintain records for 1 year from time of generation.**

Construction Industry Specific Requirements

- Create dedicated entry point(s) at every worksite, if possible, for daily screening or in the alternative issue stickers or other indicators to employees to show they received screening before entering the worksite that day
- Identify choke points and high-risk areas where employees must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
- Create protocols for minimizing personal contact upon delivery of materials to the worksite.

Manufacturing Industry Specific Requirements

- Create dedicated entry point(s) at every facility for daily screening and ensure physical barriers are in place to prevent anyone from bypassing the screening.
- Create protocols for minimizing personal contact upon delivery of materials to the facility.

Retail Industry Specific Requirements

- Require patrons to wear a face covering
- Post signs at entrances instructing patrons to wear a face covering and not to enter if they are or have recently been sick.
- Design spaces and store activities that encourage employees and patrons to maintain 6 feet of distance from one another.
- Install physical barriers at checkout, including plexiglass barriers, tape markers, or tables.
- Establish an enhanced cleaning and sanitizing protocol for high-touch areas like restrooms, credit-card machines, keypads, counters, shopping carts and other surfaces.

Restaurants and Bars Industry Specific Requirements

- Require 6 feet of separation between parties or groups at different tables.
- Require patrons to wear a face covering except when seated at their table or bar top.
- Prohibit access to common areas in which people can congregate.
- Post signs at entrances informing patrons not to enter if they are or have recently been sick.
- Post signs instructing patrons to wear face coverings until they are seated at their table.
- Require hosts, servers and staff to wear face coverings in the dining area in addition to areas where social distancing cannot be maintained.

Health Care Industry Specific Requirements

- Post signs at entrances instructing patients to wear face coverings when inside the facility, except as necessary for identification or to facilitate an examination or procedure.
- Limit waiting-area occupancy to the number of individuals who can be present while staying 6 feet away from one another and ask patrons to wait in their cars if possible.
- Mark or arrange 6 feet of social distancing in waiting rooms.
- Conduct a common screening protocol for all patients, including a temperature check and questions about COVID-19 symptoms.
- Place hand sanitizer and face coverings at patient entrances.
- Install physical barriers at sign-in, temperature screening, or other service points that normally require personal interaction.

In-Home Services Industry Specific Requirements

- Maintain accurate appointment record, including date and time of service, name of client, and contact information to aid with contact tracing.
- Prior to entering the home, inquire with the customer whether anyone in the household has been diagnosed with COVID-19, is experiencing symptoms of COVID-19, or has had close contact with someone who has been diagnosed with COVID-19. If so, the business or operation must reschedule for a different time.

Personal-Care Services Industry Specific Requirements

- Post signs at entrances instructing patrons to wear face coverings when inside the facility.
- Post signs at entrances informing patrons not to enter if they are or have recently been sick.
- Restrict entry to patrons, to a caregiver of those patrons, or to the minor dependents of those patrons.
- Limit waiting-area occupancy to the number of individuals who can be present while staying 6 feet away from one another and ask patrons to wait in their cars if possible.
- Discard magazines in waiting areas and other non-essential, shared items that cannot be disinfected.
- Mark or arrange 6 feet of social distancing in waiting rooms.
- Require employees and patrons to wear a face covering at all times.

Public Accommodations Industry Specific Requirements

- Post signs at entrances instructing patrons to wear face coverings when inside the facility.
- Post signs outside of entrances instructing patrons not to enter if they are or have recently been sick.
- Require patrons to wear a face covering.
- Establish crowd-limiting measures to meter the flow of patrons.
- For entertainment facilities, establish safe exit procedures for patrons.

Sports and Exercise Facilities Industry Specific Requirements

- Post signs at entrances instructing patrons to wear face coverings when inside the facility.
- Post signs outside of entrances instructing patrons not to enter if they are or have recently been sick.
- Mandate wearing of facial coverings at all times except when swimming.
- Provide equipment-cleaning products throughout the facility for use on equipment.
- Ensure that ventilation systems operate properly.

Enforcement of MIOSHA Rules

- Deficiencies in an employer's Preparedness and Response Plan, or failure to comply with the remote work requirements, can result in citations from MIOSHA and a fine of up to **\$7,000** for serious violations.
- On November 5, 2020, MIOSHA issued a statement it will be **conducting inspections at workplaces** with traditional office settings to review how rules are being followed and enhance compliance.
- Sample posters, Preparedness and Response Plans and Reopening Checklists are available at Michigan.gov/COVIDWorkplaceSafety
- MIOSHA Ambassador Program offers one-on-one guidance to help employers understand MIOSHA regulations. Ambassadors visit businesses statewide to offer education and support (do not issue citations or penalties).
- **MIOSHA Hotline: 855-SAFE-C19 (855-723-3219)**

“COVID-19 Response and Reopening Liability Assurance Act”

- Enacted on October 22, 2020, twenty (20) days after the Michigan Supreme Court invalidated Governor Whitmer’s ability to enact Executive Orders under the “Emergency Powers of Government Act” in a 4-3 decision.
- The Act is the product of Bills approved by the House of Representatives before the Supreme Court’s decision.
- The Act is largely made up of three (3) bills, HB 6030, HB 6031, HB 6032 and HB 6101.

HB 6030

- Section 2 provides definitions which apply throughout the Act including a “COVID-19 claim” as well as “conduct intended to reduce transmission of COVID-19.”
- Section 5 is the meat of the statute for property owners and managers: ***“A person [includes businesses, government and non-profit] who acts in compliance with all federal, state and local statutes, rules, regulations, executive orders and agency orders related to COVID-19 that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm is immune from liability for a COVID-19 claim.”***

HB 6030, cont.

- Section 5 provides additional protection: “*An isolated, de minimis deviation from strict compliance with such statutes, rules, regulations, executive orders, and agency orders **unrelated to the plaintiff’s injuries** does not deny a person immunity...*” Must be both de minimis and unrelated.
- Section 8 makes it clear that the liability protection does not constitute a defense to “*an administrative proceeding or civil action brought by a state or local government prosecutor or agency to enforce a COVID-19 regulation.*”
- Section 10 makes it clear HB 6030’s protections apply retroactively to March 20, 2020.

HB 6031

- HB 6031 provides similar liability protections to what exists in HB 6030.
- Section 85 reads:
...an employer is not liable under this act for an employer's exposure to COVID-19 if the employer was operating in compliance with all federal, state and local statutes, rules and regulations, executive orders, and agency orders related to COVID-19...

HB 6031, cont.

- The same de minimis exception which applies in HB 6030 applies to HB 6031.
- This Section also applies retroactively to March 20, 2020.

HB 6032

- The first two (2) bills, HB 6030 and HB 6032, were more about employer liability protection. HB 6032 is more about employee protection from COVID-19 related employer action.
- Section 3 precludes an employer from taking adverse action against an employee under any of the following circumstances:
 - An employee either (a) tests positive or (b) displays principal symptoms (defined earlier in the bill) and adheres to all the following guidelines before returning to work (i) 24 hours pass since a fever (ii) 10 days pass since the later of first symptoms or a negative test and (iii) employee's principal symptoms improved.
 - An employee objects to an employer's violation of the Act.
 - An employee reports health violations related to COVID-19.
 - Exception, this protection does not apply to an employee displaying symptoms who refuses to receive test within three (3) days after an employer requests a test.

HB 6032, cont.

- An employee who tests positive or who displays the principal symptoms cannot return to work until all of the following criteria can be satisfied until:
 - 24 hours have passed since a fever (ii) 10 days have passed since the later of first symptoms or a negative test and (iii) employee's principal symptoms improved.

HB 6032, cont.

- An employee with “close contact” [being within six (6) feet for fifteen (15) minutes or longer] with someone who tests positive cannot report to work until (a) fourteen (14) days passed since the close contact or the employee who tests positive receives a medical determination that the positive person was not contagious at the time of the close contact with the employee.
- There are exceptions to this rule for health care and other workers.

HB 6032, cont.

- An employee may bring a cause of action for a violation of HB 6032 and, if he/she prevails, she's entitled to at least \$5,000 in damages from the employer.
- This Act is also retroactive to March 20, 2020.

Most Important Parts of the Act

- Employers must comply with federal, state and local law as it pertains to COVID-19 to obtain immunity. It's important to stay abreast of the law (perhaps implement a daily review of Michigan Department of Health and Human Services and County Health Department websites). <https://www.michigan.gov/coronavirus>; <https://www.oakgov.com/health/Pages/default.aspx>; <https://health.macombgov.org/Health-Home>; <https://www.waynecounty.com/covid19/>
- De minimis violations do not compromise liability protection.
- Employers cannot take adverse action against employees taking proper precautions after testing positive or having “close contact” with a person who tested positive.

Impact of Legislative Process

- Several other states with Covid immunity for businesses in some form: GA, ID, IA, KS, LA, MS, NV, NC, OH, OK, TN, UT and WY
- Cannot compare actions between states
 - Some states require reasonable or substantial compliance
 - Some states impose liability only for willful or intentional misconduct
 - Some create rebuttable presumption of acceptance of the risk by posting signs at the location
- Currently, no federal act or bill providing immunity – only administrative rules for PPE manufacturers

Compromise Safe Harbor

- Compliance with applicable federal, state and local rules
- Not overcome by isolated, de minimis deviation unrelated to claim
- De minimis - too trivial or minor to merit consideration
- Compliance is key – tracking various rules is important

What is Immunity?

- Immunity from liability does not mean immunity from litigation.
- Compliance with “federal, state, and local statutes, rules, regulations, executive orders, and agency orders that had not been denied legal effect at the time of the conduct or risk that allegedly caused harm” could be difficult to establish when the guidance is unclear or contradictory.

Vigilance and Documentation

- Establish Plan
- Document Plan
- Publish Plan
- Enforce Plan
- Update Plan

Questions



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