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Michigan Becomes Second State to Adopt COVID-19-Related Workplace Health and Safety Standard

On Oct. 14, 2020, the Michigan Occupational Safety and Health Administration (MIOSHA), the agency charged with enforcing workplace safety regulations at Michigan workplaces, adopted an emergency safety and health rule to control, prevent, and mitigate the spread of COVID-19 in workplaces (Emergency Rules).

Michigan joins [Virginia](#) as the only states that have implemented COVID-19 emergency workplace standards. In the next few weeks, Oregon is poised to become the third state to enact such a standard. Other states have opted to publish comprehensive regulations regarding COVID-19 worker safety protections while others have relied on executive orders (like [New Jersey](#)) from governors to mitigate the spread of COVID-19 in the workplace. To date, the federal Occupational Safety and Health Administration (OSHA) has not created a workplace safety standard specifically related to addressing COVID-19 in the workplace, instead opting to issue numerous nonmandatory workplace safety and health guidance regarding COVID-19.

Michigan's Emergency Rules will remain in effect for six months and can be extended for an additional six months.

The Emergency Rules require employers in Michigan to, among other things:

- Rate potential exposure of job tasks based on the following categories: lower, medium, high, and very high exposure risk.
 - Lower exposure risk are job tasks that do not involve exposure to individuals known or suspected to be infected with COVID-19 or frequent exposure to the public. This includes workers with little interaction with other workers or the public.
 - Medium exposure risk are job tasks that require employees to have frequent or close contact with individuals who may be infected with COVID-19 but are not known or suspected COVID-19 patients. This includes work in areas with high community spread and workers who have contact with the general public as part of their job duties.
 - High and very high exposure risk are jobs related to the healthcare profession and those who work in morgues and laboratories.
- Create a COVID-19 preparedness and response plan that is consistent with OSHA and Centers for Disease Control (CDC) guidance. The plan must include the job task exposure determinations and the measures the employer will implement to prevent exposure.
- Create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely.

The Emergency Rules also require Michigan employers to implement a number of surveillance measures and workplace controls. Some of these requirements are likely new to employers but others are familiar to many employers and employees:

- Prohibit employees who are sick from coming to work or work in isolation and to provide hand washing and sanitizing supplies to employees. Employees with a known or suspected case of COVID-19 may not be permitted to return until they are no longer infectious pursuant to CDC guidelines and they are released from any quarantine or isolation order by the local public health department.
- Implement enhanced cleaning and disinfection measures, promote hand washing, and prohibit employees from using other employees' office equipment.
- Implement daily entry self-screening protocols for employees and contractors who enter the workplace, and if possible, temperature screening.
- Notify the local health department when they become aware of an employee, customer, or visitor with a known case of COVID-19 within 24 hours of learning of the case and notify any employees, contractors, or supplies who may have had contact with the person known to have COVID-19.
- Designate one or more safety coordinators who will be responsible for implementing, monitoring, and reporting on COVID-19 preparedness and response and one coordinator must be on-site whenever employees are present at the worksite.
- Maintain social distancing to the maximum extent possible through the use of signage and decals on the floor.
- Provide employees with face coverings and require employees wear them when social distancing is not possible. Require that employees wear face coverings in common areas.

The Emergency Rules require employers to provide employees training on COVID-19 that covers at least (1) workplace infection-control practices; (2) the proper use of personal protective equipment; (3) steps employees must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19; and (4) how to report unsafe working conditions.

Employees must keep a record of employee training, its screening protocols, and notifications to the local health department regarding employees, customers, or visitors in the workplace who have a known case of COVID-19.

Finally, the Emergency Rules, unlike Virginia's COVID-19 emergency standard, include specific requirements for worksites in 11 different industries, including construction, manufacturing, restaurants and bars, meat and poultry processing, and casinos. Employers should consult the Emergency Rules for these specific requirements.

Though some employers in Michigan may already be implementing some of the Emergency Rules' requirements and controls, employers should carefully review the Emergency Rules to ensure they are fully compliant. Michigan employers that fail to comply with the Emergency Rules are subject to fines up to \$7,000 for serious violations and \$70,000 for willful violations.

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