



Keep Calm And Carry On: What Michigan Employers Should Do After State Supreme Court Invalidated Governor's COVID-19 Orders

Insights

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The Michigan Supreme Court issued a bombshell opinion last Friday invalidating all of Governor Whitmer's executive orders since April 30, 2020, including those covering workplace safety standards, unemployment benefits, and the mask mandate. Obviously, this opinion has caused significant confusion among Michigan businesses as to what they can and should do now. This is especially true since it is currently unclear whether the opinion became effective immediately (i.e., the executive orders officially invalidated) or whether it will take effect as much as 28 days later (October 30, 2020). This alert addresses what is being done by the Michigan government to fill the void caused by the opinion and what employers should do in the meantime.

What Is The Government Doing In Response?

The governor filed a motion for clarification on when the opinion becomes effective. She is specifically requesting the opinion become effective October 30, 2020, to provide "for an orderly transition during which some responsive measures can be placed under alternative executive authority and the Governor and Legislature can work to address many other pandemic-related matters that currently fall under executive orders." The governor and Republican-controlled state legislature have announced they are both open to negotiating a replacement plan, albeit initial discussions have not been productive. Meanwhile, Attorney General Dana Nessel has already announced that her office will immediately cease enforcing the executive orders.

The Court's opinion (and the AG's non-enforcement declaration likely) led to the Michigan Department of Health and Human Services issuing an order to keep in place mask requirements, limitations on gatherings, and restaurant and bar restrictions from the governor's executive orders until October 30, 2020. Similarly, at least two county health departments (Ingham and Washtenaw county) have issued four emergency orders each covering mask requirements, limitations on social gatherings, restaurant and bar restrictions, as well as workplace health screenings. More statewide and local health department orders are expected in the coming days. Naturally, all these orders are likely to be the subject of further litigation in the coming days.

What Should Employers Do?

With things still very much unsettled and changing on an almost daily basis, you are encouraged to do three things to avoid having to repeatedly change workplace practices during this uncertain time:

- maintain the status quo;
- keep an eye out for news about local or state agency epidemic orders and see if they are more restrictive (highly unlikely); and
- wait to see what the governor's negotiations with the state legislature produce in the coming days and weeks.

In other words, keep calm and carry on with what you were already doing until more certainty is established. Fisher Phillips will continue to monitor the rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Detroit](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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