Michigan Health And Safety Agencies Institute Stopgap COVID-19 Regulations

Insights
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In the past week, two Michigan administrative agency directors have issued emergency regulations to fill in for Governor Whitmer's now-invalidated COVID-19 executive orders. The emergency regulations largely mirror Governor Whitmer's now-invalidated mask mandate, workplace protections, employee protections, and "Safe Start" executive orders. This article addresses what the two emergency regulations cover, as well as how employers should respond.

What The MDHHS Order Covers

The Michigan Department of Health and Human Services (MDHHS) Director issued an emergency order on October 9. It is summarized here, but in general it covers:

- limitations on social gatherings;
- mask mandate;
- restaurant and bar restrictions (bars can reopen indoors, but can only serve alcohol to seated parties);
- organized sports;
- contact tracing (for personal service providers, sports and entertainment facilities, gyms, fitness centers, ice rinks, and other similar indoor recreational centers); and
- basic protections for employees.

The last area is of particular importance to Michigan employers for two reasons. Under section 4(a) of the emergency order, Michigan employers are in effect required to mandate mask usage within the workplace and must prohibit in-office work unless "strictly necessary" to perform job duties.

In addition, under section 4(b) of the emergency order, employers are prohibited from having either COVID-19 infected/symptomatic employees or employees subject to a quarantine/isolation order in the workplace, until either:

- the employee is advised by a health or public health professional that they may return to work

-OR-

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- three conditions are met: (1) 24 hours since fever resolved without fever-reducing medications; (2) 10 days have passed since symptoms first appeared or since they were administered a COVID-19 test that yielded the positive result; and (3) other symptoms have improved.

These employee protection provisions are important because violations of the MDHHS emergency order can lead to civil fines of $1000 per violation (including on a per day basis). The MDHHS emergency order is set to lapse on October 30, 2020.

What The MIOSHA Order Covers

Michigan Occupational Safety and Health Administration (MIOSHA) issued emergency rules on October 14. The agency has released a helpful poster summarizing the emergency rules, but in general it mirrors the general workplace protections (e.g., COVID-19 preparedness and response plan) and industry-specific regulations (e.g., construction) found in Governor Whitmer's executive order No. 2020-184.

The emergency rules did however add a new on-year document retention requirement of: (a) COVID-19 employee training; (b) daily employee and visitor COVID-19 screenings; and (c) any mandated employer notifications of a known COVID-19 case to the local health department and coworkers. MIOSHA's emergency rules are set to lapse in six months but could possibly be extended another six months thereafter.

Implications

In light of these emergency regulations, you should continue maintaining the status quo for the time being. However, be sure your document retention policies/procedures are in compliance with MIOSHA's emergency rules. Although the MDHHS emergency order ends at the end of October, the Public Health Code does not explicitly prevent the MDHHS director from re-issuing his order.

Note that the Michigan Legislature has reportedly reached deals with Governor Whitmer on unemployment benefits (and a few other unrelated matters) to fill in her invalidated executive orders. For this reason, you should keep your ears open for any possible deal on employment-related issues between the governor and the Michigan legislature.

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.

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