

WHAT EMPLOYERS NEED TO KNOW ABOUT MICHIGAN'S STAY-AT-HOME ORDER

Insights

Apr 3, 2020

Pursuant to Executive Order 2020-21, Governor Gretchen Whitmer effectively shuttered the State of Michigan from March 24, 2020 until at least April 13, 2020. The Order, titled *Temporary requirement to suspend activities that are not necessary to sustain or protect life*, is intended to be construed broadly. It directs individuals to stay at home and prohibits public and private gatherings of any number of people who are not part of a single household. Any person venturing out from home must adhere to Centers for Disease Control and Prevention (CDC) social distancing measures, including staying at a distance of six feet or more from other people to the extent feasible.

With respect to businesses, the Order allows individuals to go to work if they are "critical infrastructure workers" necessary to sustain or protect life OR if they are necessary to conduct minimum basic operations. "Critical infrastructure workers" include those described in the [U.S. Cybersecurity and Infrastructure Security Agency March 19, 2020 guidance](#) on COVID-19, including workers in the following sectors: health care/public health; law enforcement/public safety/first responders; food/agriculture; energy; water/wastewater; transportation/logistics; public works; communications/information technology; other community-based government operations and essential functions; critical manufacturing; hazardous materials; financial services; chemical supply chains and safety; defense industrial base; child care workers; workers at certain designated suppliers and distribution centers; insurance industry; workers performing certain critical labor union functions.

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Workers necessary to “conduct minimum basic operations” are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

DESIGNATION AND WRITTEN NOTICES

Effective April 1, 2020, businesses must designate and notify in writing those of its employees it designates as either critical infrastructure workers or as necessary to conduct minimum basic operations. The written designations may be made by electronic message, public website, or other appropriate means. This designation/notice requirement does not apply to workers in health care; certain essential government state, county, and local workers such as law enforcement, public safety, and first responders; and certain workers and volunteers for food, shelter and necessities for life type services.

Any business employing critical infrastructure workers must make written designation of its suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the work of its critical infrastructure workers. These entities, in turn, may make written designation of their crucial infrastructure workers only as necessary to enable, support, or facilitate the work of the original businesses’ critical infrastructure workers. And, these designated entities may also, in turn, make written designations of their crucial infrastructure workers only as necessary to enable, support, or facilitate the work of the original businesses’ critical infrastructure workers. This process allows identification of those in the chain of supporting the original critical infrastructure to be made and to continue operation as indicated in the Order.

It is important to keep in mind that any business found to have abused its designation authority is subject to sanctions to the fullest extent of the law. A willful violation of the Order is a misdemeanor.

OPERATING BUSINESSES NECESSARY TO SUSTAIN OR PROTECT LIFE

Businesses that employ critical infrastructure workers must suspend in-person activities that are not necessary to

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sustain or protect life. Any business deploying such in-person activities must adopt mitigating measures to ensure reasonable protective precautions are in place. These include: remote work to the fullest extent possible; maintaining at least six feet distance between people, including customers standing in line; implementing COVID-19 facility cleaning and disinfection protocols; prohibiting employees from coming to the workplace who display respiratory symptoms or who have had contact with a person known or suspected to have COVID-19; implementing all CDC recommendations.

NARROW EXCEPTIONS PERMITTING INDIVIDUALS LEAVING HOME

The Order contains very limited reasons for persons to leave their homes, which include: performing their jobs as critical infrastructure workers after being designated by their employers; conducting minimum basis operations after being designated to perform such work by their employers; tasks necessary to health and safety; obtaining necessary services or supplies for themselves and family; to care for a family member or pet; to engage in outdoor activity; to care for minors, the elderly, persons with disabilities, or other vulnerable people; visit individual under care of health facility; attend legal proceedings/hearings; to work or volunteer for food, shelter and other necessities of life operations; to return home from outside the state; to leave the state for a home elsewhere; to travel between two residences in the state; or as required by law enforcement or court order.

We expect based upon Governor Whitmer's Executive Order 2020-33 titled *Expanded emergency and disaster declaration* that the Stay-at-Home Order set to expire April 13, 2020 will be extended within the next week. We will continue to monitor the rapidly developing COVID-19 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 COVID-19 Taskforce](#). You can also review our nationwide [Comprehensive and Updated FAQs for Employers on the COVID-19 Coronavirus](#) and our [FP Resource Center For Employers](#), maintained by our Taskforce.

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