



Michigan Shelter-In-Place Extension Includes More Business Restrictions

Insights

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Michigan Governor Gretchen Whitmer just extended the state's shelter-in-place order until the end of April – and created additional obligations for businesses operating during this turbulent time. The new order continues to only allow Michigan employers to require in-person work from employees who qualify as either “critical infrastructure workers” (CIWs) or workers necessary to “conduct minimum basic operations” (MBOWs). However, the new order is generally more restrictive than the previous earlier Michigan order because it places more duties on employers with CIWs or MBOWs.

Notable Changes For Businesses

First, the new order explicitly confirms that **MBOWs and CIWs do not need to carry written designations of their status on their person when traveling to and from work.** Despite this change in the new order, you should keep copies of their written designations at your worksite in the event government officials visit and request proof of compliance with the shelter-in-place order.

Second, the new order **slightly expands the definition a CIW** by adding:

- Car dealership employees; *provided that* showrooms remain closed to in-person traffic;
- Retail store employees that sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences;
- Workers at laundromats, coin laundries, and dry cleaners; and
- Workers at hotels and motels, provided the hotels and motels do not offer in-house amenities.

The hotel and motel exception appears to be aimed at out-of-town healthcare workers who travel to or within Michigan to provide services to hard hit areas during the pandemic. Notably missing from this list, however, are landscapers and real estate workers, which other states have considered essential.

Third, the new order **allows suppliers, distribution centers, or service providers to self-designate workers as CIWs.** Previously, such entities had to be designated by another entity further up in the supply chain as necessary to enable, support, or facilitate another business's or operation's CIWs. Now the onus is on the supplier, distribution center, or service provider to decide whether they are necessary to enable, support, or facilitate another business's or operation's critical infrastructure

work. As a reminder however, “only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.”

Fourth, the new order now requires **all in-person work be performed consistently with social distancing practices and mitigation measures, including but not limited to:**

- A COVID-19 Preparedness and Response Plan, *which is available at the business’s headquarters or the worksite*;
- Note: the Plan must be developed consistent with recommendations in OSHA’s Guidance on Preparing Workplaces for COVID-19
- Restricting the number of workers present to no more than is strictly necessary to perform critical infrastructure functions or its minimum basic operations;
- Increasing standards of facility cleaning and disinfection, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace; and
- Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.

Employers can satisfy the last mitigation measure by following the simple procedure that is already required in Oakland County. You should ensure the questions asked during the procedure are answered in confidence and any written record stored in accordance with the ADA’s confidentiality requirements.

Finally, **retail stores that are allowed to be open to the public must comply with the following rigid requirements:**

- Establish lines to regulate entry into the store when at capacity, with markings for patrons to enable them to stand at least six feet apart from one another while waiting;
- For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
- For stores of more than 50,000 square feet:
 - Limit customers in the store at one time (excluding employees) to four people per 1,000 square feet of customer floor space (excluding store areas that are closed under the next sub-bullet);
 - Close areas of the store that are dedicated to the following classes of goods:
 - Carpet or flooring
 - Furniture
 - Garden centers and plant nurseries

- Paint
- By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences; and
- Create at least two hours per week of dedicated shopping time for people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

Conclusion

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.

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