

MICHIGAN'S THIRD SHELTER-IN-PLACE ORDER BEGINS TO RELAX RESTRICTIONS ON BUSINESSES

Insights
Apr 25, 2020

Michigan Governor Gretchen Whitmer issued [Executive Order 2020-59](#), which extends the state's [shelter-in-place order](#) until May 15, 2020 while also beginning to relax a number of restrictions on businesses. 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) – but now also permits some "resumed activity" workers (RAWs). The new order also removes a lot of the controversial aspects of the prior order. What do employers need to know about this latest development?

NOTABLE CHANGES

First, the new order adds RAWs as workers who may resume working. RAWs are narrowly defined as: (a) workers who process or fulfill remote orders for goods for delivery or curbside pick-up; (b) workers who perform bicycle maintenance or repair; (c) workers for garden stores, nurseries, lawn care, pest control, and landscaping operations; (d) certain outdoor recreation maintenance workers and groundskeepers; and (e) workers for moving or storage operations.

Employers must designate their RAWs in writing, just as they must do with MBOWs and CIWs, but RAWs are not required to carry the designation on their person. As a reminder, you should keep copies of your written designations at the

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worksite in case government officials decide to visit and request proof of compliance with the shelter-in-place order.

Second, the new order requires all resumed activity work listed in (c) through (e) above be performed consistently with [social distancing practices and mitigation measures mentioned previously](#), as well as the following “enhanced” social distancing measures:

- Barring gatherings of any size in which people cannot maintain six feet of distance from one another;
- Limiting in-person interaction with clients and patrons to the maximum extent possible, and barring any such interaction in which people cannot maintain six feet of distance from one another;
- Providing personal protective equipment such as gloves, goggles, face shields, and face masks as appropriate for the activity being performed; and
- Adopting protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning of tools, equipment, and frequently touched surfaces.

Third, retail stores that do not sell necessary supplies (e.g., groceries, medical supplies, sanitation, etc.) may sell their goods through remote sales via delivery or at the curbside, but a business or operation must otherwise remain closed to the public. For example, hobby stores may sell model kits online via delivery or curbside pick-up, but they must remain closed to patrons.

Fourth, retail stores that are allowed to be open to the public for in-person sales may now sell and advertise goods other than necessary supplies (e.g., paint, carpet, plants, and furniture) if the sale of such goods is in the ordinary course of business (i.e., the store normally sells the goods). As another reminder, the [occupancy restrictions based on store size are still in effect](#), as well as the special hours of operation.

Finally, starting April 27, 2020, employers must provide, at a minimum, workers who perform in-person work with non-medical grade face coverings. Notably, the order states “[t]he protections against discrimination in the Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 et

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seq., and any other protections against discrimination in Michigan law, apply in full force to persons who wear a mask under this order.” The intent of this provision is unclear and employers should wait for guidance from the Michigan attorney general.

WHAT SHOULD EMPLOYERS DO?

As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

CONCLUSION

Fisher Phillips 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 Post-Pandemic Strategy Group Roster](#).

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