



Michigan Governor Consolidates In-Person Workplace Safety Requirements And Announces Initial Reopening Standards

Insights

5.19.20

Michigan Governor Gretchen Whitmer issued [an Executive Order](#) to consolidate and update in-person workplace safety requirements that were previously provided within the shelter-in-place order, while also outlining new guidance on how restaurants, bars, research laboratories, and offices will be able to operate in areas of the state safe enough for them to operate. To be clear, this order did not reopen all Michigan restaurants, bars, retail stores, and offices.

Governor Whitmer [issued a separate executive order](#) that allowed restaurants, bars, non-essential retail locations, and offices to open up in the upper peninsula and most northern Michigan counties in the lower peninsula (Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet) starting May 22. Below please find a summary of the general requirements all employers must follow, as well as the industry-specific requirements that must be followed.

General

The order requires all employers comply with certain requirements to open. Most notably, every employer must develop a COVID-19 preparedness and response plan, consistent with recommendations in [Guidance on Preparing Workplaces for COVID-19](#), developed by the Occupational Health and Safety Administration. Every employer must have their plan readily available (via website, internal network, or hard copy) to employees, labor unions, and customers by June 1, 2020 or within two weeks of resuming in-person activities, whichever is later.

Every employer is required to designate one or more worksite supervisors to implement, monitor, and report on the COVID-19 control strategies within the plan. The supervisor must remain on-site at all times when employees are present on site. Every employer must provide COVID-19 training to employees that covers at least: (1) workplace infection-control practices; (2) proper use of personal protective equipment; (3) steps the employee must take to notify the employer of any COVID-19 symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19; and (4) how to report unsafe working conditions.

Every employer must also do all of the following:

- Conduct a daily entry self-screening protocol for all individuals entering the workplace, including a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.
- Keep everyone on the worksite premises at least six feet from one another to the maximum extent possible.
- Provide non-medical grade face coverings to their employees.
- Require face coverings to be worn when employees cannot consistently maintain six feet of separation from other individuals in the workplace and consider face shields when employees cannot consistently maintain three feet of separation from other individuals in the workplace.
- Increase facility cleaning and disinfection to limit exposure to COVID-19 and adopt protocols to clean and disinfect the facility in the event of a positive COVID-19 case in the workplace.
- Make cleaning supplies available to employees upon entry and at the worksite and provide time for employees to wash hands frequently or to use hand sanitizer.
- When an employee is identified with a confirmed case of COVID-19, within 24 hours, notify both: (a) the local public health department, and (b) any co-workers, contractors, or suppliers who may have come into contact with the person.
- Establish a response plan for dealing with a confirmed infection in the workplace, including protocols for sending employees home and for temporary closures of all or part of the worksite to allow for deep cleaning.

Finally, the order requires employers maintain records of: (a) the COVID-19 training provided to employees; (b) the daily health screening questionnaires (and temperature checks); and (c) any confirmed positive COVID-19 case notifications. Employers should treat the latter two types of records as medical records that must be stored separately in compliance with Americans with Disabilities Act.

Offices

Office-based employers must also do each of the following:

- Assign dedicated entry points for all employees to reduce congestion at the main entrance.
- Provide visual indicators of appropriate spacing for employees outside the building in case of congestion.
- Take steps to reduce entry congestion and to ensure the effectiveness of screening (e.g., by staggering start times, adopting a rotational schedule in only half of employees are in the office at a particular time).
- Require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.
- Turn off water fountains.

- Prohibit social gatherings and meetings that do not allow for social distancing or that create unnecessary movement through the office.
- Provide disinfecting supplies and require employees wipe down their work stations at least twice daily.
- Post signs about the importance of personal hygiene.
- Disinfect high-touch surfaces in offices (e.g., whiteboard markers, restrooms, handles) and minimize shared items when possible (e.g., pens, remotes, whiteboards).
- Institute cleaning and communications protocols when employees are sent home with symptoms.
- Notify employees if the employer learns that an individual (including a customer, supplier, or visitor) with a confirmed case of COVID-19 has visited the office.
- Suspend all nonessential visitors.

Restaurants And Bars

Restaurants and bars must do each of the following:

- Limit capacity to 50% of normal seating.
- Require six feet of separation between parties or groups at different tables or bar tops.
- Create communications material for customers (e.g., signs, pamphlets) to inform them of changes to restaurant or bar practices and to explain the precautions that are being taken to prevent infection.
- Close waiting areas and ask customers to wait in cars for a call when their table is ready.
- Close self-serve food or drink options, such as buffets, salad bars, and drink stations.
- Provide physical guides, such as tape on floors or sidewalks and signage on walls to ensure that customers remain at least six feet apart in any lines.
- Post signs at store entrances: (a) informing customers not to enter if they are or have recently been sick; and (b) instructing customers to wear face coverings until they get to their table.
- Require hosts and servers to wear face coverings in the dining area.
- Require employees to wear face coverings and gloves in the kitchen area when handling food, consistent with guidelines from the Food and Drug Administration (“FDA”).
- Limit shared items for customers (e.g., condiments, menus) and clean high-contact areas after each customer (e.g., tables, chairs, menus, payment tools, condiments).
- Train employees on: (a) appropriate use of personal protective equipment in conjunction with food safety guidelines; (b) food safety health protocols; and (c) how to manage symptomatic customers upon entry or in the restaurant.

- Notify employees if the employer learns that an individual (including an employee, customer, or supplier) with a confirmed case of COVID-19 has visited the store.
- Close restaurant immediately if an employee shows multiple symptoms of COVID-19 and perform a deep clean, consistent with guidance from FDA and the Center for Disease Control; such cleaning may occur overnight.
- Require a doctor's written release to return to work if an employee has a confirmed case of COVID-19.
- Install physical barriers, such as sneeze guards and partitions at cash registers, bars, host stands, and other areas where maintaining physical distance of six feet is difficult.

Manufacturing Employers

Manufacturing employers must also do each of the following:

- Create dedicated entry point(s) at every facility for daily screening and ensure physical barriers are in place to prevent anyone from bypassing the screening.
- Suspend all non-essential in-person visits, including tours.
- Train employees on Routes by which the virus causing COVID-19 is transmitted from person to person and distance that the virus can travel in the air, as well as the time it remains viable in the air and on environmental surfaces.
- Reduce congestion in common spaces wherever practicable.
- Implement rotational shift schedules where possible to reduce the number of employees in the facility at the same time.
- Stagger meal and break times, as well as start times at each entrance, where possible.
- Install temporary physical barriers, where practicable, between work stations and cafeteria tables.
- Create protocols for minimizing personal contact upon delivery of materials to the facility.
- Adopt protocols to limit the sharing of tools and equipment to the maximum extent possible.
- Discontinue use of hand dryers.
- Notify plant leaders and potentially exposed individuals upon identification of a positive case of COVID-19 in the facility, as well as maintain a central log for symptomatic employees or employees who received a positive test for COVID-19.
- Send potentially exposed individuals home upon identification of a positive case of COVID-19 in the facility.
- Require employees to self-report to plant leaders as soon as possible after developing symptoms of COVID-19.
- Shut areas of the manufacturing facility for cleaning and disinfection, as necessary, if an employee goes home because he or she is displaying symptoms of COVID-19.

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Outdoor Employers

Employers whose work is primarily and traditionally performed outdoors must also: (a) prohibit gatherings in which people cannot maintain six feet of distance from one another; (b) provide and require the use of personal protective equipment such as gloves, goggles, face shields, and face coverings, as appropriate for the activity being performed; and adopt protocols to limit the sharing of tools and equipment to the maximum extent possible and to ensure frequent and thorough cleaning and disinfection of tools, equipment, and frequently touched surfaces.

Construction Industry Employers

Construction industry employers must also:

- Create dedicated entry points at every worksite (if possible) for daily screening or in the alternative issue stickers or other indicators to employees to show that they received a screening before entering the worksite that day.
- Provide instructions for the distribution of personal protective equipment and designate on-site locations for soiled face coverings.
- Require the use of work gloves where appropriate to prevent skin contact with contaminated surfaces.
- Identify choke points and high-risk areas where employees must stand near one another (such as hallways, hoists and elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.
- Notify contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among employees at the worksite.
- Restrict unnecessary movement between project sites.
- Create protocols for minimizing personal contact upon delivery of materials to the worksite.

Research Labs (Non-Diagnostic Testing Labs)

Research lab employers must also:

- Assign dedicated entry point(s) and/or times into lab buildings.
- Suspend all non-essential in-person visitors (including visiting scholars and undergraduate students) until further notice.
- Close open workspaces, cafeterias, and conference rooms.
- As necessary, use tape on the floor to demarcate socially distanced workspaces and to create one-way traffic flow.
- Require all office and dry lab work to be conducted remotely.
- Minimize the use of shared lab equipment and shared lab tools and create protocols for disinfecting lab equipment and lab tools.

- Provide disinfecting supplies and require employees to wipe down their work stations at least twice daily.
- Implement an audit and compliance procedure to ensure that cleaning criteria are followed.
- Establish a clear reporting process for any symptomatic individual or any individual with a confirmed case of COVID-19, including the notification of lab leaders and the maintenance of a central log.
- Clean and disinfect the work site when an employee is sent home with symptoms or with a confirmed case of COVID-19.
- Send any potentially exposed co-workers home if there is a positive case in the facility.

Retail

Retail stores that are open for in-store sales must also:

- Create communications material for customers (e.g., signs or pamphlets) to inform them of changes to store practices and to explain the precautions the store is taking to prevent infection.
- 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 (excluding employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.
- For stores of **more than 50,000 square feet**: (a) limit customers in the store at one time (excluding employees) to four people per 1,000 square feet of customer floor space; and (b) 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.
- Post signs at store entrances: (a) instructing customers of their legal obligation to wear a face covering when inside the store; and (b) informing customers not to enter if they are or have recently been sick.
- Install physical barriers at checkout or other service points that require interaction, including plexiglass barriers, tape markers, or tables, as appropriate.
- Establish an enhanced cleaning and sanitizing protocol for high-touch areas like restrooms, credit-card machines, keypads, counters, shopping carts, and other surfaces.
- Train employees on: (a) appropriate cleaning procedures, including training for cashiers on cleaning between customers; and (b) how to manage symptomatic customers upon entry or in the store.
- Notify employees if the employer learns that an individual (including a customer or supplier) with a confirmed case of COVID-19 has visited the store.

As a reminder, all Michigan retail stores that sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences or motor vehicles can be open throughout the state of Michigan. However, all other retailers are only permitted to be open for in-store shopping in the UP and certain northern Michigan counties starting May 22.

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](#).

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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