



## MDHHS Revives Face Mask Requirement, Gathering Limits, and Bar Restrictions through Emergency Order

*Foster Swift Coronavirus Resource Page and Eblast*

October 5, 2020

On Friday, October 2, 2020, the Supreme Court held Governor Whitmer lacked the authority to issue any executive orders after April 30, 2020 to combat the spread of COVID-19. In response, the Director of Michigan Department of Health and Human Services (MDHHS) issued an Emergency Order to place limitations on bars, the size of gatherings, and to require face masks in certain settings. The order is similar to previous executive orders issued by the Governor.

The Public Health Code gives the Director of the MDHHS the ability to prohibit gatherings and proscribe other regulations necessary to prevent disease, prolong life, and promote public health. The department notes the statute from which it derives this authority was passed in response to the 1918 Spanish Flu and was specifically intended to address epidemics. It is a misdemeanor to violate this order, and violators are subject to imprisonment of not more than 6 months or a fine of up to \$200 or both.

### **Restrictions on Bars and Restaurants**

There are two notable changes from the executive orders to this Emergency Order for food service establishments. First, bars are no longer prohibited from operating simply because they make more than 70% of their gross receipts from the sale of alcohol. Second, bars and restaurants are no longer limited to 50% of normal seating. Instead, all food service establishments must close all indoor common areas where people can congregate, dance, or otherwise mingle. Bars and restaurants that sell alcohol must prohibit indoor gatherings unless parties are seated, separated by at least 6 feet, and are prohibited from intermingling.

### **Limitations on Gatherings**

Gatherings are once again limited in capacity based on whether the gathering is indoors or outdoors, the size of the venue, whether seating is fixed or not, and by region. The regions are the same regions used by Governor Whitmer in her executive orders. For indoor gatherings of

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more than 10 persons or outdoor gatherings of more than 100 persons, the following capacity limits apply:

**Capacity Limits**

**Indoor Non-Residential Events**

**Outdoor Non-Residential Events**

**Fixed Seating Venue**

**Venue without Fixed Seating**

**Fixed Seating Venue**

**Venue without Fixed Seating**

**Regions 1, 2, 3, 4, 5, 7 & 8**

20% seating capacity

20 people per 1,000 sq. ft. of venue space or in each room

30% seating capacity

30 people per 1,000 sq. ft. of venue space or in each room

**Region 6**

**(Northern L.P.)**

25% seating capacity

25 people per 1,000 sq. ft. of venue space or in each room

30% seating capacity

30 people per 1,000 sq. ft. of venue space or in each room

**Max Capacity (all Regions)**

500 people

1,000 people

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The limitation on gathering sizes does not apply to voting or election-related activities at polling places, training for public emergency personnel, to organized sports, or to students in a classroom or children in a daycare.

### **Face Coverings**

Face coverings are required for indoor gatherings of any kind, including in a business, school, or government office. Businesses should not serve patrons not wearing a facemask unless that person has made a verbal representation that he or she cannot medically tolerate a face covering or falls within one of the other exceptions. Face masks are recommended but not required for schools in region 6.

For questions concerning this communication, please contact:

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For questions or assistance related to COVID-19, contact your Foster Swift attorney or a member of Foster Swift's Coronavirus Task Force:

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