



How Do Recent Michigan Supreme Court and MDHHS Orders Regarding COVID-19 Impact Employers?

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Foster Swift Legal Update E-blast

October 6, 2020

Recent fast-paced orders coming from different corners of State government have left some employers understandably puzzled about how to best comply with COVID-related laws. This article will provide employers guidance based upon the current state of the law, which may change after the publication of this article.

A Very Short History

On October 2, 2020, the Michigan Supreme Court determined that Governor Whitmer did not have authority after April 30, 2020, to issue or renew executive orders related to the COVID-19 pandemic. Those executive orders included EO 2020 - 153 regarding the wearing of face coverings, EO 2020-176, which set certain requirements for opening or operating businesses, and EO 2020-184 regarding worker protection. The Court held that these executive orders were not enforceable.

Shortly after the Court's decision, the Michigan Attorney General suspended her office's prosecution of violations of those unconstitutional orders. The Attorney General asked other State agencies and law enforcement to use their best judgment to determine whether to exercise their authority to implement and enforce COVID-19 safeguards to fight the pandemic.

Significantly, on the evening of October 5, 2020, the Michigan Department of Health and Human Services (MDHHS) did just that and issued *Emergency Order Under MCL 333.2253 – Gathering Prohibition and Mask Order* under the Public Health Code. The MDHSS order implemented new restrictions and procedures to reduce the spread of COVID.

What Does This Mean for Employers?

Until a court issues an order rendering the MDHHS order unenforceable, employers who violate the MDHHS order are at risk for criminal prosecution, civil fines, licensing actions by regulatory

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agencies, and enforcement by local police. The specifics of the MDHHS order can be found here. Below are some of the most important instructions for employers:

- Require all individuals – including employees and members of the public - to wear a face covering whenever there is an indoor gathering, which includes the workplace. There are some exceptions[1]. A gathering is any occurrence of where people from multiple households are present in a shared space in a group of two or more.
- Require people not part of the same household to keep a social distance of six feet, including by designing the gathering to encourage and maintain social distancing.

Have Other Agencies Issued Rules Which Employers Must Follow?

Many county health departments are contemplating or have already implemented their own version of mask and other restrictions on gatherings. In addition, the Michigan Occupational Safety and Health Administration (MIOSHA) has issued citations against employers under its general authority to regulate the health and safety of workplaces. MIOSHA based these citations on site inspections, during which it claims the employers had deficiencies in health screenings, face coverings, employee training, cleaning measures and overall preparedness plans.

We will continue to monitor this situation and provide updates when they become available. **In the interim, we urge caution in changing preparedness plans and workplace policies, including screening and wearing of face coverings, until more sufficient clarity is available.**

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[1] *Exceptions include schools in Region 6, children under five years old, those who cannot medically tolerate a face covering, those engaged in a public safety role, among others. See Paragraph 3 of the Order for a full list of exceptions.*
