

Michigan Modifies Third Shelter-In-Place Order To Further Open The Economy

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Michigan Governor Gretchen Whitmer issued Executive Order 2020-70, which expanded the industries that may perform in-person work under the state's shelter-in-place order that is slated to end on May 15, 2020. The new order's modifications impact only the new industries discussed below and take effect on May 7. Which industry employers can now perform in-person work and what restrictions must they abide by?

Affected Industries

The new order adds four new types of "resumed activity" workers (RAWs): (a) workers who perform work that is traditionally and primarily performed outdoors; (b) construction industry workers (including the building trades such as electricians and plumbers); (c) workers in the real estate industry; and (d) "workers necessary to the manufacture of goods that support workplace modification to forestall the spread of COVID-19 infections."

The first category appears to strictly cover workers who perform almost 100% of their job outdoors (e.g., forestry workers, parking enforcement workers, and outdoor equipment workers). The last category is aimed at manufacturers of office dividers and other apparatuses employers would use to prevent the spread of COVID-19 within the workplace.

Employers covered by the newest must designate their RAWs in writing, but they are not required to carry the designation on their person. Also, as a reminder, you should keep copies of your written designations at the worksite in case government officials decide to

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visit and request proof of compliance with the shelter-in-place order.

Compliance Measures Applicable To Affected Industries

The new order requires all resumed activity work be performed consistently with social distancing practices and mitigation measures mentioned previously. However, the traditional outdoor and construction RAWs must also abide by 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.

Construction work is subject to even more requirements, including:

- Designating a site-specific supervisor to monitor and oversee the implementation of the enhanced social distancing measures. The supervisor must remain on-site at all times during activities. An on-site worker may be designated to perform the supervisory role.
- Conducting a daily entry screening protocol for workers and visitors entering the worksite, including a questionnaire covering symptoms and exposure to people with possible COVID-19, together with, if possible, a temperature screening.
- Either designating dedicated entry points for the entry screening or issuing some kind of indicators to workers (e.g., stickers) to show that they received a screening before entering the worksite that day.
- Requiring face shields or masks to be worn when workers cannot consistently maintain six feet of separation from other workers.
- Providing instructions for the distribution of personal protective equipment and designate on-site locations for soiled masks.
- Encouraging or requiring the use of work gloves.
- Identifying choke points and high-risk areas where workers must stand near one another (e.g., hoists, elevators, break areas, water stations, and buses) and control their access and use (including through physical barriers) so that social distancing is maintained.



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- Ensure there are sufficient hand-washing or hand-sanitizing stations at the worksite to enable easy access by workers.
- Notifying contractors (if a subcontractor) or owners (if a contractor) of any confirmed COVID-19 cases among workers at the worksite.
- Create protocols for minimizing personal contact upon delivery of materials to the worksite.

Finally, the real estate industry is also subject to a few unique caveats:

- No in-person open houses are allowed;
- Showings, inspections, appraisals, photography or videography, or final walk-throughs must be by appointment only **and** no more than four people may be present on the premises at any point in time; and
- Private showings may only be arranged for owner-occupied homes, vacant homes, vacant land, commercial property, and industrial property

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.