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IMPORTANT CLIENT UPDATE

In response to a recent increase in reported COVID-19 cases across the State of Michigan, the following actions by the State's Executive Branch have been taken to address the COVID-19 pandemic:

Michigan Department of Health and Human Services:

- 1) **General Overview:** The Michigan Department of Health and Human Services (MDHHS) issued an Epidemic Order Under MCL 333.2253 effective November 18, 2020 adopting regulations related to COVID-19, including the regulation of gatherings, building capacities, face coverings, food service establishments, organized sports, the protection of employees in the workplace, and facility-specific contact tracing.¹ The MDHHS Epidemic Order provides that it is effective through December 8, 2020.
- 2) **Indoor Gatherings at Non-Residential Venues:** This MDHHS Epidemic Order prohibits indoor gatherings at non-residential venues consistent with guidance issued by the MDHHS. "Gatherings" is defined as "any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in shared space."
- 3) **Exceptions to Indoor Gatherings at Non-Residential Venues:** Per the MDHHS Epidemic Order, as a condition of hosting a gathering, venues must encourage and maintain physical distancing to ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible. Such limitations on indoor gatherings do not apply to, among other things:
 - a. An employee meeting with a customer for purposes of receiving services; and
 - b. Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA (defined below) on October 14, 2020; and
 - c. Training of law enforcement, correctional, medical, or first responder personnel insofar as said activities cannot be conducted remotely.

¹ The MDHHS initially adopted an Emergency Order under MCL 333.2253 on October 5, 2020, which was rescinded and replaced by MDHHS on October 9, 2020; October 29, 2020; and again November 18, 2020 (signed November 15, 2020).

- 4) Face Masks During Gatherings: The MDHHS Epidemic Order states that all persons who choose to participate in a gathering will be required to wear a face mask. Moreover, for day-to-day operations, government offices must:
 - a. Prohibit gatherings of any kind *unless* individuals, including employees, are required to wear a face mask; and
 - b. Deny entry or services to all persons refusing to wear face masks while gathered.

Michigan Occupational Safety and Health Administration:

- 1) General Overview: On October 14, 2020, the Michigan Department of Labor and Economic Opportunity (LEO), Michigan Occupational Safety and Health Administration filed Emergency Rules regarding COVID-19 with the Michigan Secretary of State. These Emergency Rules were promulgated by the Director of LEO to establish clear requirements for employers in an effort to control, prevent, and mitigate the spread of COVID-19 among their employees. These new Emergency Rules are to be in effect for a six (6) month duration per their provisions.
- 2) Exposure Determination for all Employers: Employers shall evaluate their employees' routines and reasonably anticipated tasks and procedures to determine what, if any, risk or exposure the employees may face. Such job tasks and procedure must then be classified into lower, medium, high, and very high risk categories.
- 3) COVID-19 Preparedness and Response Plan for all Employees: Under the Emergency Rules, employers shall develop and implement written COVID-19 preparedness and response plans in line with current CDC guidance and recommendations. This plan shall include the employee exposure determination and measures the employer will implement to prevent employee exposure.
- 4) Basic Infection Prevention Measures for all Employers: Employers shall promote basic infection prevention measures in the workplace by requiring employees to stay home and isolate if sick; establishing disinfection procedures if it is suspected or confirmed that employees, customers, or visitors have a known case of COVID-19; and creating a teleworking policy prohibiting in-person work to the extent an employee's work can be completed remotely. Such policy should list which positions and/or classifications must be physically present in the workplace and why said positions and/or classifications cannot be performed remotely. This must include enough specificity to show that a proper analysis was performed by the employer. Additionally, these policies should be included with the preparedness and response plan described herein with a notation that the policy will be updated based upon the needs and discretion of the employer.
- 5) Health Surveillance for all Employers: Employers shall conduct daily pre-entry self-screenings of employees and contractors entering the workplace. Such screenings shall include, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with COVID-19 together with a temperature screening, if possible.

- 6) Workplace Controls for all Employers: Employers shall designate worksite COVID-19 safety coordinators to enforce the employers' rules. Additionally, posters should be placed around the workplace encouraging social distancing, cough and sneeze etiquette, and proper hygiene. The employer is responsible for ensuring all employees keep at least 6 feet away from one another to the maximum extent possible. Moreover, the employer is required to provide non-medical grade face coverings, which must be worn by employees when unable to consistently maintain 6 feet of distance from one another.
- 7) Personal Protective Equipment Requirements for all Employers: Employers shall provide personal protective equipment to employees appropriate to the exposure risk associated with their respective jobs.
- 8) Training Requirements for all Employers: Employers shall train all employees on workplace infection-control practices, proper use of personal protective equipment, notification procedures of suspected or confirmed exposure to COVID-19 and reporting unsafe working conditions.
- 9) Recordkeeping Requirements for all Employers: Employers shall maintain records of all trainings, screening protocols, and records of required notifications. Records must be maintained for one year from the time of generation.
- 10) Industry-specific requirements. These MIOSHA COVID-19 Emergency Rules also establish a number of "industry-specific" requirements that could indirectly impact public entities, including specific rules for construction; manufacturing retail, libraries, and museums; restaurants and bars; health care; personal-care services; public accommodations; meat and poultry processing; and casinos.

Interplay between the MDHHS Epidemic Order and MIOSHA Emergency Rules:

As noted above, the MDHHS Epidemic Order and MIOSHA Emergency Rules contain regulations regarding gatherings and the use of face masks both inside and outside of the workplace. These overlaps have created some confusion regarding which regulations to enforce and when.

- 1) Gatherings: Under the MDHHS Epidemic Order, it clearly states that MIOSHA's Emergency Orders controls with regard to gatherings in the workplace. This means that employees gathering together in a workplace will not be held to the same standards as individuals gathering in private homes or attending gatherings open to the general public as dictated by MDHHS.² When, however, a member of the public is present in the workplace beyond for quick customer service, MDHHS Epidemic Order guidelines will prevail. Nevertheless, the general intent of both the MIOSHA and MDHHS regulations is to discourage in-person gathering to greatest extent possible and instead utilize other

² Per the Epidemic Order, as a condition of hosting a gathering, venues must encourage and maintain physical distancing to ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

alternative methods that may be viable whenever reasonably possible, including use of remote and virtual options when available.

- a. Example 1: If a member of the public enters the clerk's office to receive services, MIOSHA's Emergency Orders will apply as such gathering is not prohibited by the MDHHS Epidemic Order.
 - b. Example 2: Some of the Board of Commissioners would like to physically meet in person for a Board meeting. The meeting is properly noticed as a virtual-only meeting, so members of the public are not physically in attendance. So long as all employee participants and members of the Board of Commissioners can maintain at least 6 feet of distance from one another such a meeting is permissible. However, the MIOSHA Emergency Rules provide for masks to be worn "...in shared spaces, including during in-person meetings..." The MDHHS Epidemic Order suggests that the mask may not be required when a person is actually speaking in such a setting provided the 6-foot social distancing can be maintained. Again, if members of the public also physically attend, under the MDHHS Epidemic Order restrictions the gathering (meeting) is prohibited.
 - c. Example 3: Some of the Board of Commissioners would like to physically meet in person for a Board meeting and the meeting is properly noticed as a virtual-only meeting. However, under the Open Meetings Act (OMA) public attendance must be permitted, either by remote access or physical attendance. If persons do physically attend that are not part of the County officials or staff that have business before the Board, the MDHHS Epidemic Order restrictions would then also be applicable and such a gathering is prohibited.
- 2) Face Masks: While the MDHHS Epidemic Order clearly states that government offices must prohibit gatherings of any kind unless individuals, including employees, are required to wear a face mask, and must deny entry or services to all persons refusing to wear a mask, MIOSHA's Emergency Rules takes precedence in the workplace.
- a. Example 1: If a member of the public enters the clerk's office to receive services, masks must be worn at all times if all parties are unable to maintain 6 feet of distance from one another.
 - b. Example 2: Some of the Board of Commissioners would like to physically meet in person for a Board meeting. The meeting is properly noticed as a virtual-only meeting, so members of the public are not physically in attendance. So long as all employee participants and members of the Board of Commissioners can maintain at least 6 feet of distance from one another such a meeting could be permissible. However, the MIOSHA Emergency Rules expressly provide masks are required "*in shared spaces, including during in-person meetings*" The MDHHS Epidemic Order suggests that the mask may not be required when a person is actually speaking in such a setting provided the 6-foot social distancing can be maintained. Again, if members of the public also physically attend, under the MDHHS Epidemic Order restrictions the gathering (meeting) is prohibited.

Should you have questions, please do not hesitate to contact our Office.

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