




**Covid-19**

UPDATE:  
July 14, 2020

**Coronavirus / COVID-19  
Response Team**


MILLER   
JOHNSON  
Attorneys

1

MILLER   
JOHNSON  
Attorneys

**MIOSHA & COVID-19  
Safety Series: Part I**

» Sandy Andre  
Sarah Willey

MILLER   
JOHNSON  
Attorneys

The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer–client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.

3

## Today's Topics

- MIOSHA Webinar Series
- MIOSHA Overview
- MIOSHA and COVID-19

4

## MIOSHA Webinar Series

## MIOSHA Webinar Series Topics

- Webinar #1: **TODAY**
  - MIOSHA Enforcement and the General Duty Clause
- Webinar #2: Thursday, July 23, 2020
  - The 3 R's: Reporting, Recording, and Records
- Webinar #3: Wednesday, July 29, 2020
  - Preventing the Spread: MIOSHA ***Standards*** applicable to the COVID-19 pandemic

## MIOSHA Overview

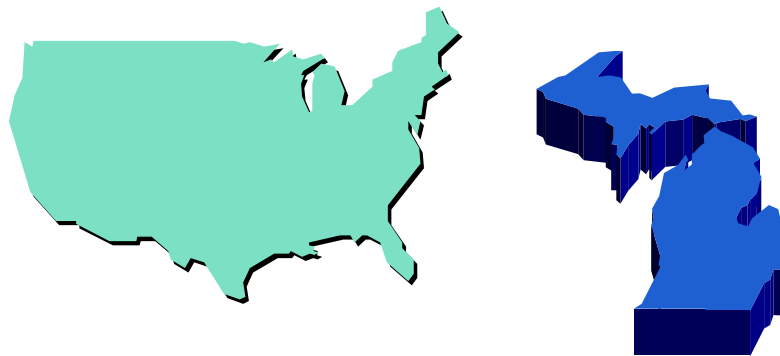
### Michigan Occupational Safety and Health Act (MIOSHA)

- Effective January 1, 1975
- All employees shall be provided safe and healthful work environments free from recognized hazard
- Prescribes and regulates working conditions
- Duties of employers and employees
- General Duty Clause
- General Industry Standards
- Construction Standards

## Michigan Occupational Safety and Health Administration (MIOSHA)

- Agency within Department of Labor and Economic Opportunity (LEO) that enforces the MIOSH Act
- MIOSHA Organization:
  - General Industry Safety & Health Division (GISHD)
  - Construction Safety & Health Division (CSHD)
  - Consultation Education & Training Division (CET)
  - Appeals Division
  - Employee Discrimination Section
  - Technical Services Division

## Relationship Between OSHA and MIOSHA



## MIOSHA and COVID-19

### MIOSHA and COVID-19: Enforcement

- No specific COVID-19 standards
  - June 4, 2020: MI Court of Claims declared that EO-97 was unlawful to the extent that it deemed any violation of its workplace safety standards a per se violation of MIOASH Act.
  - July 9, 2020: EO-145, acknowledges the Court of Claims decision, removes the reference to MIOASH Act violation

## MIOSHA and COVID-19: Enforcement

- Existing standards that apply:
  - Personal Protective Equipment Standard
  - Sanitation Standard
  - Respiratory Protection Standard
  - Hazard Communication
  - Access to Employee Exposure & Medical Records
  - Recording and Reporting Occupational Injuries and Illnesses
- General Duty Clause

## MIOSHA and COVID-19: Enforcement

- MIOSHA's COVID-19 Interim Enforcement Plan
    - Personal Protective Equipment Standard
    - Sanitation Standard
    - Respiratory Protection Standard
    - OSHA Enforcement Memos
    - COVID-19 Executive Orders
    - OSHA Guidance on Preparing Workplaces for COVID-19
    - CDC
- General Duty Clause Compliance

## MIOSHA and COVID-19: Enforcement - General Duty Clause

- COVID-19 Executive Orders
  - EO 2020-110/115: Temporary restrictions on certain events, gatherings, and businesses
  - EO 2020-145: Safeguards to protect Michigan workers

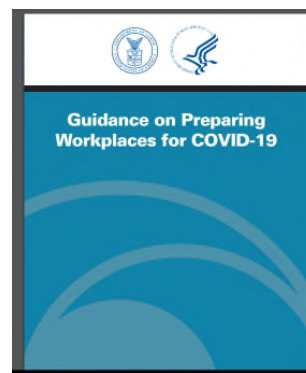
Executive Order	Industry
EO 2020-149	Food selling establishments and pharmacies
EO 2020-148	Long-term care facilities
EO 2020-146	MDOC facilities
EO 2020-132	Pre K-12 education for 2020-2021 school year
EO 2020-137	Migrant and seasonal agricultural workers
EO 2020-136	Health care facilities

- EO 2020-36: Protecting workers who stay home, stay safe when they or their close contacts are sick

## MIOSHA and COVID-19: Enforcement - General Duty Clause

### General Duty Clause violations (cont.).

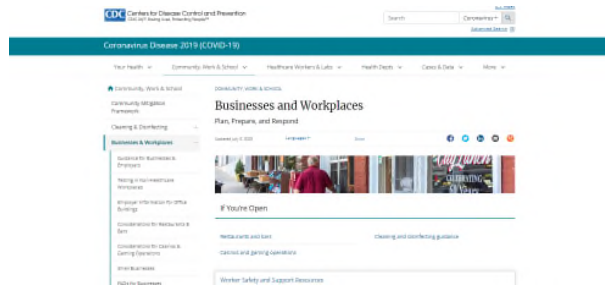
- OSHA Guidance on Preparing Workplaces for COVID-19
  - Preparedness Plan





## MIOSHA and COVID-19: Enforcement - General Duty Clause

- General Duty Clause violations (cont.)
  - CDC: **guidance**



## MIOSHA and COVID-19: Enforcement - General Duty Clause

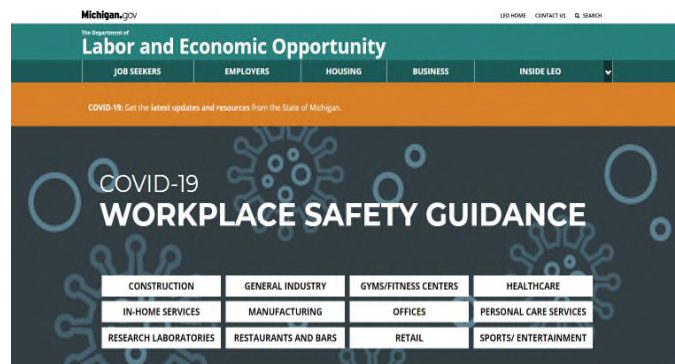
- **Letter** inspections related to alleged failures in:
  - COVID-19 Training
  - Social Distancing requirements/mitigation strategies
  - PPE
  - Daily Entry Screening Protocol and recordkeeping
  - Symptomatic employees continuing to work
  - Positive Test Protocol and recordkeeping
  - Requiring on-site work

## MIOSHA and COVID-19: Checklist

<u>All Industries</u>	
Preparedness and Response Plan	Designate a Worksite Supervisor
Training	Communications (postings, policies)
Daily entry screening protocol	Positive case protocol
Cleaning and disinfecting	Face coverings, face shields, hand sanitizer
Social distancing/mitigation strategies (markings, barriers, etc.)	Remote work/essential travel
<u>Industry Specific</u>	
Review EO 2020-145 sections 2-14	Review industry-specific EO's
Review MIOSHA industry-specific guidance	Review OSHA and CDC industry-specific guidance

## MIOSHA: Industry-Specific Guidance

- LEO website: <https://www.michigan.gov/leo>



## CDC: Industry-Specific Guidance

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

Community, Work & School

COMMUNITY, WORK & SCHOOL

**Businesses and Workplaces**

Plan, Prepare, and Respond

Updated July 3, 2020 Languages Print

Community Mitigation Framework

Cleaning & Disinfecting

**Businesses & Workplaces**

Worker Safety & Support

Schools & Child Care

Colleges & Universities

Parks & Recreational Facilities

Gatherings & Community Events

Community & Faith-Based Organizations

First Responders, Law Enforcement & Public Services

Shared & Congregate Housing

**If You're Open**

Restaurants and bars Cleaning and disinfecting guidance

Casinos and gaming operations

Worker Safety and Support Resources

## OSHA: Industry-specific guidance

<https://www.osha.gov/SLTC/covid-19/controlprevention.html#interim>

seriously ill COVID-19 patients. However, employers outside of healthcare also may experience the effects of shortages as PPE supplies are diverted to healthcare facilities where they are most needed.

Although employers are always responsible for complying with OSHA's PPE standards (29 CFR 1910 Subpart I), including the Respiratory Protection standard (29 CFR 1910.134), whenever they apply, OSHA is providing temporary enforcement flexibility for certain requirements under these and other health standards.

**Interim guidance for specific worker groups and their employers**

This section provides information for specific worker groups and their employers who may have potential exposures to SARS-CoV-2. Guidance for each worker group generally follows the hierarchy of controls, including engineering controls, administrative controls, safe work practices, and PPE. However, not all types of controls are provided in each section. In those cases, employers and workers should consult the interim general guidance for U.S. workers and employers of workers with potential occupational exposures to SARS-CoV-2, above.

- Airline operations
- Border protection and transportation security
- Business travelers
- Construction
- Correctional facility operations
- Dentistry
- Emergency response and public safety
- Environmental (i.e., janitorial) services
- Farmworkers\*
- Healthcare
- In-home repair services
- Laboratories
- Manufacturing†
- Meat and poultry processing\*
- Oil and gas operations
- Postmortem care
- Retail operations
- Solid waste and wastewater management
- Seafood processing†
- Travel to areas where the virus is spreading

\*Developed in partnership with CDC. †Developed in consultation with the U.S. Food and Drug Administration

## Getting This Right

### **MIOSHA: Types of Violations/Penalties**

Type of violation	Maximum Penalty
Serious	\$7,000 per violation
Other-than-Serious (OTS)	\$7,000 per violation
Failure to Abate	\$7,000 per day beyond abatement period
Willful	\$70,000 per violation
Repeat	\$70,000 per violation

## MIOSHA: Refusal to Work

- If a dangerous condition in the workplace:
  - (1) clearly presents a risk of death or serious physical harm;
  - (2) there is not sufficient time for MIOSHA to inspect; and
  - (3) a worker has brought the condition to the attention of the employer where possible to do so,
- The worker has a legal right to refuse to work in a situation in which he or she would be exposed to the hazard.



**Sandy Andre**

616.831.1731

andres@millerjohnson.com



**Sarah Willey**

269.223.2957

willeys@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW  
Suite 1100  
Grand Rapids, MI 49503

100 W Michigan Ave  
Suite 200  
Kalamazoo, MI 49007

## Back to Work Resource Center

<https://resources.millerjohnson.com/>

MILLER JOHNSON  
Resource Center

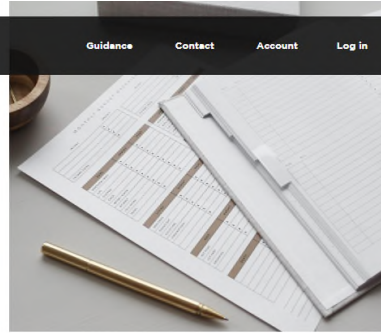
Guidance Contact Account Log in

Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

For less than the cost of a typical handbook update, you gain access to an extensive collection of resources and Miller Johnson work product that we are confident will provide meaningful support to your efforts to navigate waters that are not only choppy but continuously changing direction.

Here is a sampling of what subscribers will find:

- Forms, Plans and Policies - we have drafted templates for you to put into service immediately
- Practical Guidance - tools to effectively, safely and confidently return to work incorporating best practices from outside organizations, including community partners such as Spectrum Health
- Industry Specific Guidance - pages devoted to industries singled



27