



COVID-19

UPDATE:
November 10, 2020

**Coronavirus / COVID-19
Response Team**

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Remote Work Requirements

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Agenda

- MIOSHA's Remote work requirement
 - MIOSHA Rule 5(8)'s remote work requirement
 - MIOSHA Interim Enforcement Guidance
 - MIOSHA FAQ's regarding remote work
- Recommended approach
- Developments to watch

MIOSHA Emergency Rule

October 14, 2020

- Temporary standard; effective for 6 months
- Rule 5: Basic Infection Prevention Measures for All Employers
 - (8) “The employer shall create a ***policy*** prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely.”

MIOSHA Interim Enforcement Guidance

- Updated: Nov. 4, 2020
- Penalties:
 - Serious/Other than Serious/Failure to Abate: Up to \$7,000/violation
 - Willful/Repeat: Up to \$70,000/violation
- Remote Work Policy:
 - Lack of implementation of a remote work policy would be cited as serious under Rule 4(1).
 - Lack of the existence of a policy would be cited under Rule 5(8) typically as other-than-serious.
 - Existence of a policy may be established through written documentation of the policy or employee acknowledgment of the existence of a policy.

MIOSHA Emergency Rules FAQ

Michigan.gov

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COVID-19 WORKPLACE SAFETY

LABOR AND ECONOMIC OPPORTUNITY / COVID-19 WORKPLACE SAFETY

Executive Rule 5(8) says: The employer shall create a policy prohibiting in-person work for employees to the extent that their work activities can feasibly be completed remotely. What type of policy is required?

MIOSHA recognizes that employers must determine who may work remotely, as well as those that must report to work. It is essential that businesses have a thoughtful, reasoned policy for why work that is completed in person cannot feasibly be completed remotely. This is what MIOSHA will check for. MIOSHA will not focus on evaluating the business' judgment of feasibility, except for cases of obvious misapplication.

RELATED CONTENT

Is an office area containing employees in cubicle-styled configurations a "shared space"? Are employees required to wear face coverings while inside their cubicle?

Executive Rule 11(1) requires employers to maintain a record of the daily screening. What daily screening records must the employer maintain?

Executive Rule 7(f) requires face coverings in shared spaces, including during in-person meetings and in restrooms and hallways. When is a space considered a "shared space"?

So, How Do We Comply?

- COVID-19 Preparedness and Response Plan
 - Include a written statement regarding Remote Work
- Stand-alone Remote Work policy
- Implement a process to show thoughtful reason for on-site work
 - **ONGOING**

Thoughtful, Reasoned Policy

- Some position: More obvious
- Others: Implement an assessment process
- Considerations could include:
 - Impact on customer relationships/client demands
 - Costs to the Company for coordination of remote work
 - Impact on Operations
 - Impact on co-workers
 - History of poor job performance that shows a need for direct oversight
 - Confidentiality concerns
 - Availability of technology resources (including appropriate security measures)
 - Availability of a conducive remote work environment

Thoughtful, Reasoned Policy

- Ongoing evaluation
- Requirements when on-site work is required
- As appropriate, implement all of the “regular” expectations you would have for remote work
 - Performance expectations
 - Time reporting expectations
 - Agreements related to equipment, etc.

We Wish We Were Kidding . . .



Developments to Watch

- MDHHS Guidance
 - “Strict requirement”
 - **NOT** binding
- Legislation?

KEEPING A SAFE WORKPLACE
Issued November 6, 2020
Michigan.gov/Coronavirus

Executive Summary

- Given the available epidemiological data with concerning rising cases of COVID-19, employers have a crucial role to play to ensure that employees who must come to work are operating in a safe environment.
- Employers should adopt practices to make workplaces as safe as possible.
- Work should be completed remotely unless it is strictly necessary for an employee to be in person to complete their job duties.

Current COVID-19 Conditions

Michigan is facing a significant resurgence of COVID-19. The state currently has a daily case rate of 261 cases per million people, which is more than double from one month ago. Percent positivity is at 7.5%. Trends for both metrics have been increasing for over a month and a half. Hospitalization trends, which tend to appear two to four weeks after cases, have been rising over the past five weeks.

Currently, there are 28 documented COVID-19 outbreaks in an office setting and the number of new outbreaks reported continue to increase week after week. Office settings make up 5% of all documented outbreaks, and 7% of new outbreaks identified in the last week. Additionally, 8.3% of current outbreaks are in manufacturing and construction and 33% of those were first identified in the last week.

It is clear that there is widespread community transmission of COVID-19 at this time. The best mitigation we have to prevent further spread is to promote physical distancing.

Creating a safe work environment

“Before Times” Requirements Still Apply

- ADA reasonable accommodation analysis
- EEOC: Allowing an individual with a disability to work at home ***may*** be a form of reasonable accommodation
- Considerations can include:
 - The employer’s ability to supervise the employee adequately
 - Whether any duties require use of certain equipment or tools that cannot be replicated at home
 - Whether there is a need for face-to-face interaction
 - Whether the position requires the employee to have immediate access to documents/information located only at the workplace

What Do I Need To Do?

- Adopt a policy
- Analyze each position/employee
- Consider using a form to assist with the analysis

Common Questions

- Does the designation “essential employee” matter?
- I know working remotely can be a reasonable accommodation under the ADA. Can working from the office be a reasonable accommodation?
- Is “better team work” a reason to require in-person work?



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Back to Work Resource Center

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

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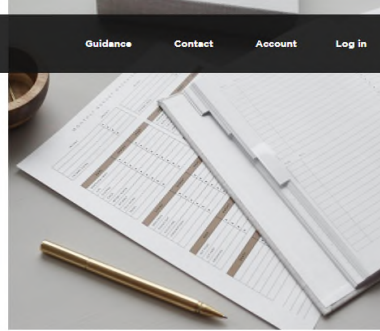
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Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

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



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