




COVID-19

UPDATE:
November 17, 2020

**Coronavirus / COVID-19
Response Team**


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**What Office Settings With
In-Person Work Need to Do
Now to Prepare for a
MIOSHA Visit**

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Today's Topics

- Review current MIOSHA Emergency Rules
- Provide update on
 - MDHHS Emergency Order
 - Revised FAQ
 - Statements from Sean Egan Q & A on 11/16
- How to prepare now for MIOSHA investigation

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Review

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.”

Update

MIOSHA FAQ

Michigan.gov

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The Department of
Labor and Economic Opportunity

BUREAUS & AGENCIES

BOARDS, COMMISSIONS & COUNCILS

INSIDE LEO

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 will accept a written policy which indicates that employees are not to perform in-person work activities where the work activity can be feasibly be completed remotely.

Employers are obligated to demonstrate infeasibility of remote work.

Employers should include in the remote work determination information which covers at least:

- Which positions/classifications report for in-person work and why they must be physically present in the workplace;
- Reasons that this work cannot be performed remotely; this must include enough specificity to show this analysis has been performed.

This written policy may be part of the employer's COVID-19 preparedness and response plan. It does not have to be a stand-alone document.

Revised MDHHS Order 11/15

- Press conference and leaked information about Order:
 - Work from home order unless *impossible*
- Actual Order:
 - Completely silent about remote work
- MIOSHA Emergency Rules continue to apply

Sean Egan Q & A – 11/16

- Employers must prohibit in-person work “to the maximum extent possible”
- Schools must demonstrate the need for in-person work just like other workplaces
- Employees’ mental health concerns alone not enough to justify in-person work
- Implied expectation that employers will provide necessary technology
- Employers cannot allow in-person work just because employees can distance or have individual offices

Sean Egan Q & A – 11/16 (Cont.)

- Policy should include list of positions that require in-person work and the reasons their job responsibilities cannot be performed remotely
- MIOSHA is looking for good faith efforts to comply; “reasoned and thoughtful”
 - If employer is acting in good faith, violations unlikely, but MIOSHA will likely identify employees who should be working remotely
- Goal is to get as many people out of workplaces as possible

How to Prepare for Investigation

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 SEP on COVID-19 Office/Remote Work Investigations

- Targeting industries that typically have primarily office workers, such as insurance, finance, real estate, and information technology
- Other industries: focus on office workers
- Employee complaint can also trigger investigation

Investigation Will Include

- Review of COVID-19 Preparedness and Response Plan
- Compliance with MIOSHA Emergency Rules
- Compliance with other MIOSHA Standards: PPE, Sanitation, Recording and Reporting Injuries and Illnesses
- Review of Remote Work Policy
 - Created
 - Implemented (in good faith)
- Assessment of occupational exposure to COVID-19
- Employee interviews

What To Do Now?

1. Create A Thoughtful, Reasoned COVID-10 Temporary Remote Work Policy

- Statement showing requirement that all work that can feasibly be performed remotely cannot be done on-site
- Commitment to assesses all positions for which in-person work is not obvious, with an emphasis on office workers
- Identify factors that require in-person work
- List office positions for which in-person work is required and why (or state that Company will keep a list)

Step 1 (Cont.)

- Discuss expectations for remote work and compliance with policies
- Reference any existing remote work agreements, policies, etc.
- Identify temporary nature of remote work
- Reiterate protocols for any necessary on-site tasks

2. Implement the Policy

- List all office positions/work
- Identify all job responsibilities that must be done in-person and why
- Get input from employee and supervisor
- Consider using written assessment form

3. Communicate

- Communicate in writing to all office employees whether remote work is feasible
- For employees who have duties for which in-person work is necessary, identify those responsibilities in writing to the employee so that there is a clear understanding

4. Listen To Employee Complaints/Concerns About In-Person Work

- Review again job responsibilities to confirm whether in-person work is necessary
- Communicate again in writing

5. Review Plans & Compliance

- Review COVID-19 Preparedness and Response Plan for compliance with MIOSHA Emergency Rules
- Review workplace compliance with MIOSHA Emergency Rules
 - On-site COVID-19 supervisor
 - Masks
 - Daily health screening & documentation
 - Positive test protocol & documentation
 - Prohibit employees with symptoms from working
 - Employee training & documentation

5. Review Compliance With Other MIOSHA Standards

- PPE
- Sanitation
- Recording and Reporting Injuries and Illnesses (if occurred in the workplace)



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Back to Work Resource Center

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

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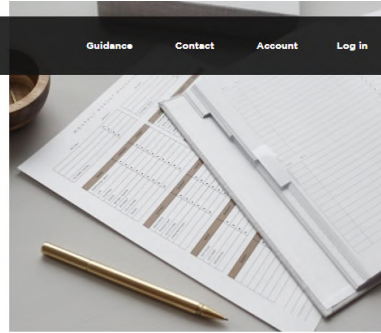
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Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

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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