

UPDATE:  
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**Covid-19**

Coronavirus / COVID-19  
Response Team

MILLER  
JOHNSON  
Attorneys



MILLER  
JOHNSON  
Attorneys

**Deeper-Dive Into MIOSHA:  
Understanding the Draft Permanent  
Rules**

»» Sandy Andre  
Hillary Scholten

MILLER  
JOHNSON  
Attorneys



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## Today's Topics

1. Understanding the new draft MIOSHA rules
2. Making public comments
3. Anticipating a federal rule

## Draft MIOSHA Rules

## A Brief Refresher: MIOSHA Emergency Rule

- Extended: April 10, 2021
- Expiration: Oct. 14, 2021
- 12 Rules:
  - Exposure Determination
  - COVID-19 Preparedness and Response Plan
  - Basic Infection Prevention Measures
  - Health Surveillance
  - Workplace Controls (masks, distancing, posters, etc.)
  - PPE
  - Industry-specific requirements
  - Training requirements
  - Recordkeeping requirements

## Permanent Rules?

- March 19, 2021:
  - MIOSHA issues a press release, announcing it has initiated the process of formal rulemaking
- Why?
  - Emergency Rules could be extended only an additional 6 months
  - Mechanism to continue any requirements to mitigate and control the spread of COVID-19 in the workplace beyond the emergency rulemaking authority
  - “The rationale for changing the rules is that the current emergency rules will expire.”

## What Might The New Rules Say?

- **Good news:**
  - Much of the proposed Permanent Rule looks a lot like the current Emergency Rule and in several places is less restrictive
  - “There is little difference between current behavior/practice and desired behavior/practice since there are currently MIOSHA COVID-19 emergency rules in effect.”
- **Bad news:**
  - Not time limited

## What Might The New Rules Say?

### 12 Rules

- COVID-19 Preparedness and Response Plan
  - Consistent with the latest guidance from CDC and federal OSHA
- Basic Infection Prevention Measures
  - Establish procedures for disinfection in accordance with the latest CDC guidance

## What Might The New Rules Say?

- Basic infection prevention measures
  - Remote Work:
    - “The employer shall create a policy promoting remote work for employees to the extent that their work activities can feasibly (e.g., technical, economical, performance) be completed remotely.”
- Health surveillance
  - COVID-19 Positive case:
    - Removes requirement to notify the health department
    - Employee permitted to return only after they are no longer infectious according to the latest guidelines from the CDC “or state or local health authorities, whichever is more stringent.”

## What Might The New Rules Say?

- Industry-specific requirements
  - Restaurants and bars
    - 6 feet of separation between parties. “This provision shall be rescinded 14 days after the Michigan department of health and human services (MDHHS) removes this requirement.”
    - Prohibit access to common areas in which people can congregate. “This provision shall be rescinded 14 days after the MDHHS removes this requirement.”
  - Recordkeeping
    - Employers must maintain records for 6 months from time of generation.

## What Might The New Rules Say?

- Rule 12: Requirements for MIOSHA
  - **Question:** When do these rules go away?
    - “Within 21 days of the expiration or rescission of any remaining emergency order issued for COVID-19 . . . . The department shall examine the continued need for these COVID-19 rules.”
  - **Answer:** This does not mean that these Rules would automatically go away 21 days after the expiration or rescission of an emergency order related to COVID-19, only that MIOSHA must evaluate the continued need for these rules.

## Michigan: Rulemaking Process

## Understanding The Rulemaking Process

- Request for rulemaking
- Draft rules
- **Regulatory Impact Statement**
  - A Regulatory Impact Statement & Cost-Benefit Analysis (RIS) issued 28 days prior to the public hearing.
- Public Hearing
  - Notice must be published in at least 3 newspapers at least 10 days prior to the meeting
- Joint Committee on Administrative Rules Report
  - The JCAR Report summarizes the purpose of the draft rules and any comments made at the public hearing or submitted in writing.
- Filing with the Office of the Great Seal

## Making Public Comment

- Tentative public hearing May 26, 2021
- Public comments accepted now through May 26, 2021
- Miller Johnson attorneys available to help you draft your public statement or prepare for public comment
- Information about this Rule from the Administrative Rulemaking System:
  - <https://ars.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1285>

## A Federal Rule?



## Anticipating A Federal Rule

- President Biden requested a rule by March 15, 2021
- If federal rule issued *prior* to MI rule, MI could likely withdrawal proposed rule and follow federal standard
- If federal rule is issued *after* MI rule is already in place, federal rule will guide except where MI rule is stronger
- Federal rule will likely follow the permanent VA rule

## Items To Watch In Federal Rule

- Drafted broadly as an airborne virus rule, not simply a rule related to the COVID-19 pandemic
- Risk classifications (VA rule)
  - Very high, high, medium, lower risk
  - Industry-specific guidelines
- Adaptability (VA rule): written so as to automatically incorporate any CDC recommended changes
- Whistleblower provisions (VA rule): protections for employees who report workplace safety violations to the media (could invalidate media and social media policies).

## Jan 29<sup>th</sup> Federal OSHA Guidance

- Guidance “contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace.”
- 16 bullet points, describing the “Roles of Employers and Workers in Responding to COVID-19”
  - Good News/Bad News

## Jan 29<sup>th</sup> Federal OSHA Guidance

- Assignment of workplace coordinator
- Identification of where and how workers might be exposed to COVID-19 at work (hazard assessment)
- Identification of a combination of measures that will limit the spread of COVID-19 in the workplace (hierarchy of controls)
- *Consideration of protections for workers at higher risk of severe illness through supportive policies and procedures*
- Establishment of a system for communicating effectively with workers in a language they understand
- Educate and train workers on your COVID-19 policies and procedures
- Instruct workers who are infected or potentially infected to stay home and isolate or quarantine
- Minimize the negative impact of quarantine and isolation on workers (*mentions FFCRA tax credits*)
- Isolating workers who show symptoms at work
- Performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility
- Providing guidance on screening and testing
- Recording and reporting COVID-19 infections and deaths
- Implementing protections from retaliation and setting up an *anonymous process* for workers to voice concerns about COVID-19 related hazards
- *Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees*
- Not distinguishing between workers who are vaccinated and those who are not



**Sandy Andre**

616.831.1731  
andres@millerjohnson.com



**Hillary Scholten**

616.831.1751  
scholtenh@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW  
Suite 1100  
Grand Rapids, MI 49503

100 W Michigan Ave  
Suite 200  
Kalamazoo, MI 49007

409 E. Jefferson Ave  
Fifth Floor  
Detroit, MI 48226