

# CLIENT ALERTS

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## Do Businesses Need to Send Some Employees Home to Work?

7.31.2020

Citing the number of increasing COVID-19 cases over the past month, Governor Whitmer increased restrictions through Executive Orders 2020-160 and 2020-161, which take effect today. Although the Governor attributed increased cases to large social gatherings at homes, lakes, and bars, these orders do not just impact bars, public accommodations, and social gatherings.

The “Safeguards to protect Michigan’s workers from COVID-19,” as previously laid out in EO 2020-145 are now replaced by EO 2020-161. The new EO 2020-161 repeats the safeguards from EO 2020-145 and adds safeguards for casinos, which are permitted to open on August 5th at 15% capacity.

Consistent with the previous Executive Order, EO 2020-161 provides that all businesses are to “[p]romote remote work to the fullest extent possible.” However, EO 2020-160 states that “[a]ny work that is capable of being performed remotely (i.e. without the worker leaving his or her home or place of residence) *must* be performed remotely.” This amends the language of rescinded EO 2020-115 issued June 5, 2020, which provided that “[w]ork that can be performed remotely...*should* be performed remotely.”

The inconsistency between EO 2020-160 (any work that can be performed remotely *must* be performed remotely) and 2020-161 (all businesses are to promote remote work to the fullest extent possible) may leave businesses questioning whether they must change their policies. To date, the Governor’s FAQs have not addressed this issue or the apparent inconsistency between the two EOs. Until the Governor provides clarification, the most cautious route for employers to take includes re-assessing whether work currently being performed in the business can be performed remotely, making adjustments where necessary, and documenting the reasons that any employee working in-person is unable to perform his or her duties remotely.

### Related Services

Labor and Employment

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If you have any questions about how the Executive Orders impact your business and whether your business is in compliance, please contact your Butzel Long Labor and Employment attorney or any member of the Butzel Long Labor and Employment Practice Group.

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