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Governor Announces Some Parts of the State Can Re-Open

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Updates to the Michigan COVID-19 Response Include Creation of Regions Allowing More “Resumed Activities” and a Separate Order Defining “Safeguards to Protect Michigan’s Workers from COVID-19”

Today, Michigan’s Governor, Gretchen Whitmer, issued a first executive order separately defining the “Safeguards” businesses must follow to allow employees to return to work. She then issued a second executive order defining separate regions within the state and classifying certain activities within specific regions as “Resumed Activities” – loosening certain Stay Home restrictions on those regions.

According to Executive Order 2020-92 (the “Revised Stay Home Order”), Executive Order 2020-91 (the “Worker Safeguards Order”) replaces the worker safeguards that were included in earlier versions of the series of stay home, stay safe orders.

The Revised Stay Home Order, along with creating eight regions within the state (the “Regions”), allows residents in two regions to engage in social gatherings (of up to 10 people), and allows for reopening retail stores, offices, and restaurants and bars with limited seating capacity as described below. For purposes of the Revised Stay Home Order, the Regions are broken down as follows:

- Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
- Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
- Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.

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- Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
- Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
- Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
- Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
- Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

As to Regions 6 and 8 only, on May 22:

- Workers necessary to perform retail activities (excluding those defined as places of public accommodation in EO 2020-69 – e.g. museums, theatres, and casinos, among others) are able to resume in-person work.
- Workers in an office setting that are unable to continue to work remotely may resume in-person work.
- Subject to further restrictions by local government, workers in restaurants or bars, subject to the capacity constraints and workplace standards described in Executive Order 2020-91, are permitted to resume in-person work.

The Worker Safeguards Order is a standalone order. Significant changes to worker safeguards as captured in section 11 of previous stay home, stay safe orders, compared to the Worker Safeguard Order, include:

- The addition of a deadline to develop, implement, and make available a COVID-19 preparedness and response plan – set for June 1, 2020, or two weeks after resuming in-person activities, whichever is later;
- The additional requirement that all businesses and operations are now required to designate worksite supervisors to implement, monitor and report on COVID-19 control strategies – such supervisor must be on-site at all times when employees are present;
- The additional requirement that all businesses and operations are now required to train employees on certain COVID-19 topics;
- The additional requirement that all businesses and operations are now required to conduct daily entry self-screening protocol;
- The additional requirement that all businesses and operation are now required to notify, within 24 hours of a confirmed COVID-19 case, local public health departments and any co-workers, contractors, or suppliers who may have come into contact with the person with the confirmed case of COVID-19;

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- The additional requirement to keep a record of all COVID-19 training (Section 1(c)), daily screenings (Section 1(d)), and public health and employee notifications of positive COVID-19 cases (Section 1(k)); and
- Additional directives to encourage and promote the use of PPE and social distancing strategies in the workplace as well as on public transit.

As with the most recent requirements of section 11 of the stay home, stay safe orders, outdoor work, construction work, and manufacturing work all have additional, specific requirements such as the creation of entry points, spacing break and eating times, and more. Research laboratories are also included in this set of additional, specific restrictions as the Revised Stay Home Order incorporates research laboratory work into the list of Resumed Activities.

In addition to the previously allowed Resumed Activities, as highlighted above, Retail Stores, Offices, and Restaurants and Bars are now part of the Resumed Activities in certain – each has its own set of worker safeguard requirements based on the Worker Safeguards Order.

Retail Stores must, among other things:

- Limit customers based on store size and created dedicated shopping time for vulnerable populations;
- Post signs indicating a “legal obligation” for mask usage, post barriers at points of worker/customer interaction, and design spaces and store activities to encourage 6-foot distancing;
- Train employees on certain COVID-19 topics and practices, as well as establish enhanced cleaning and sanitizing protocol; and
- Limit staffing to the minimum number necessary to operate.

Offices must, among other things:

- Assign dedicated entry points and control congestion;
- Require face-covering in shared spaces, including in-person meetings, in the restroom, and hallways;
- Take certain steps to increase distancing;
- Turn off water fountains, and prohibit social gatherings and meeting that do not allow for social distancing or allow unnecessary movement in the office; and
- Restrict all non-essential travel, including in-person conference events.

Restaurants and Bars must, among other things:

- Limit capacity to 50% of normal seating;
- Require 6-feet of spacing between parties at different tables;

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- Communicate with written materials to customers to explain changes and COVID-19 prevention steps;
- Close waiting areas and self-serve food and drink options, and post signs and barriers to ensure 6-foot distancing requirements;
- Post signs at entrances instructing customers not to enter if they have been sick;
- Require employees to wear masks in the dining area, to wear masks and gloves in the kitchen, and train employees on certain COVID-19 topics;
- Limit shared items for customers (e.g. menus)

As the list of exceptions grows, and now gets more complex with a region-by-region return to work strategy, you undoubtedly will have questions on how the various orders, including the Revised Stay Home Order and Worker Safeguards Order, apply to you and your business. Butzel Long has kept you up to date on the developments, and continues to develop proposed best-practices on how to navigate these murky executive order waters. Reach out to your Butzel Long attorney with specific questions and for assistance applying these, and future, executive orders to your business.

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