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Governor Whitmer Orders Most Businesses to Stay Closed Until April 30 – Other Changes All Businesses Need to Know

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Governor Whitmer extended Michigan's "Stay Home, Stay Safe" order today, issuing more restrictions and instructing individuals and most businesses to "stay home" until April 30, 2020. The Executive Order, EO 2020-42, can be found [here](#). While this Order only extends the stay-home requirements through April 30, the Governor indicated that the end date could be revisited. While the new Order rescinds the original Order (EO 2020-21), it uses much of the same language, adopting what the governor has characterized as "effective" results from that first Order. It also, however, adds some new provisions and makes other changes.

The latest Order is not just an extension of the first stay-home Order. The new Order includes many new restrictions and also attempts to add clarity by identifying some specific businesses that are part of the critical infrastructure, and therefore exempt from the stay home Order. It should be noted, while many use the term "essential businesses" to characterize the types of work that is allowed to continue under the stay home Order, the proper designation of this work is actually "critical infrastructure" work.

Exceptions allowing residents to leave their homes were limited in most respects. The Order now allows, however, for an individual to obtain supplies for their pets, allows for the delivery of purchased vehicles, and allows for attendance at funerals in the state (so long as no more than 10 people attend the funeral). The narrowing of the exceptions includes an expectation that the number of people leaving homes to run errands will be limited. Perhaps most critically for individuals, after April 10th, individuals may no longer travel between two residences within the state. Notably, "all other travel is [now] prohibited, including travel to vacation rentals."

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As far as who is part of the critical infrastructure, the new Order again adopts the US Cybersecurity and Infrastructure Security Agency (CISA) guidance from March 19, 2020. Specifically, however, the Order clarifies that it **only** incorporates the first version of the guidance, and not the broader, subsequent guidance. (For information on the differences between the various guidance, you can find multiple webinars and Client Alerts Butzel Long has published in the last month here.) While this section of the new Order (Section 8) remains quite narrow (and potentially vague) with regard to who is allowed to operate as a critical infrastructure worker, Section 9 of the Order was arguably broadened by expressly identifying specific Critical Infrastructure workers. For example, the first Order required Critical Infrastructure Suppliers to be “designated” as such by a Critical Infrastructure operation. Now, however, “Any supplier, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate *another business’s or operation’s critical infrastructure*” is included in the critical infrastructure. Similarly, “Any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers” may also continue to operate. Rather than having to be designated by a customer, these critical infrastructure suppliers or service providers may now in essence self-designate themselves.

Subsections (f) through (i) were added and identify critical infrastructure workers to include:

(f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies, and repair stores, hardware and home maintenance stores, and home appliance retailers.

(g) Workers at laundromats, coin laundries, and dry cleaners.

(h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.

(i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

In-person operation requirements are directly addressed in the new stay-home Order as well. Specifically, the Order requires:

Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:

- **Developing a COVID-19 preparedness and response plan.** Such a plan must be available at the company headquarters or the worksite. Butzel Long can assist businesses with establishing such a plan.
- **Restricting the number of workers present on-premises** to no more than is strictly necessary to perform the business’s, operation’s, or government agency’s critical infrastructure functions or its

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minimum basic operations.

- **Promoting remote work** to the fullest extent possible.
- **Keeping workers and patrons who are on-premises at least six feet from one another** to the maximum extent possible.
- **Increasing standards of facility cleaning and disinfection** to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.
- **Adopting policies to prevent workers from entering the premises if they display respiratory symptoms** or have had contact with a person with a confirmed diagnosis of COVID-19.
- Any other social distancing practices and mitigation measures recommended by the CDC.

Shopping and errands will also change for at least the next three weeks. New requirements exist for patron flow and access to in-person sales establishments and a limitation on the number of people in stores, including employees, for both large and small stores – 4 people per 1000 sq. ft. in the first instance, and a maximum of 25% capacity in the second based on overall store size. Further, for stores larger than 50,000 sq. ft., areas dedicated to carpet or flooring; furniture, garden centers, and plant nurseries; and paint are to be closed by “cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means.” For these large businesses, the new stay-home Order further requires advertising for these types of items to be stopped and requires the business to dedicate two-hours per week of shopping time to “vulnerable populations,” including for people over the age of 60, pregnant women, or those with chronic health conditions.

The picture remains blurry in many respects. Butzel Long’s EO Analysis team, as well as many of our other attorneys in a variety of other industries, continue to stay up to speed on these EO issues. We are also available to provide guidance on the various available relief mechanisms for workers, small businesses, and large businesses alike. We are available to help counsel you and your business through these difficult times.

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