

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

GENERAL RULES

EMERGENCY RULES

CORONAVIRUS DISEASE 2019 (COVID-19)

Filed with the secretary of state on May 24, 2021

These rules take effect upon filing with the secretary of state and shall remain in effect until October 14, 2021.

(By authority conferred on the director of the department of labor and economic opportunity by sections 19, 21, and 24 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1019, 408.1021, and 408.1024, and Executive Reorganization Order Nos. 1996-1, 1996-2, 2003-1, 2008-4, 2011-4, and 2019-3, MCL 330.3101, 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998)

FINDING OF EMERGENCY

These rules are promulgated by the Director of the Michigan Department of Labor and Economic Opportunity to establish requirements for employers to control, prevent, and mitigate the spread of coronavirus disease 2019 (COVID-19) among employees. Based on the best available scientific evidence and public health guidance published by the U.S. Centers for Disease Control (CDC) and other public health authorities, COVID-19 is an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). SARS-CoV-2 is easily transmitted through the air from person-to-person through respiratory aerosols. In addition to its contagious nature, COVID-19 is dangerous and deadly. As of May 11, 2021, the State of Michigan had a total of 867,341 confirmed cases and 18,338 deaths.

Work, by its nature, removes people from the confines and relative safety of their homes to interact with others who may be carrying the virus including coworkers, customers, patients, or the public at large. Employees who come into contact with others at work are at elevated risk of infection.

Since March 2020, employers have reported 61 worker deaths from COVID-19 in Michigan and 173 in-patient hospitalizations for COVID-19 potentially linked to workplace exposure to SARS-CoV-2. MIOSHA has received over 15,000 complaints from employees alleging uncontrolled COVID-19 hazards in the workplace and 580 referrals from local government, including local health departments, indicating that businesses were not taking all the necessary measures to protect their employees from SARS-CoV-2 infection.

May 21, 2021

To date, the Food and Drug Administration has granted emergency use authorization to three vaccines to prevent COVID-19, providing a path to end the pandemic. The State of Michigan is part of the largest mass vaccination effort in modern history and is presently working toward vaccinating at least 70% of its residents 16 and older as quickly as possible.

The Legislature has declared that “all employees shall be provided safe and healthful work environments free of recognized hazards.” MCL 408.1009. Employers must provide employees with “a place of employment that is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.” MCL 408.1011(a). Nonetheless, Michigan’s experience with COVID-19 demonstrates that the disease can spread rapidly without protective measures and standards in place. Workplaces, where employees, customers, and members of the public congregate, pose a particular threat for COVID-19’s spread. To mitigate and limit COVID-19’s spread in workplaces and to protect employees across Michigan, it is necessary to impose these rules and standards.

Businesses must do their part to protect employees, their patrons, and their communities. Many businesses have already done so by implementing robust safeguards to prevent viral transmission. But we can and must do more: no one should feel unsafe at work. Pursuant to section 21(2) of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1021, I find that these emergency rules are necessary to protect employees during the ongoing COVID-19 pandemic.

Based on the best available scientific evidence and public health guidance available regarding the spread of COVID-19 in the workplace, I find that these emergency rules are necessary to protect employees. If the non-emergency rulemaking process specified in the administrative procedures act of 1969 (APA), 1969 PA 306, MCL 24.201 to 24.328, for the promulgation of rules was followed, employees across Michigan may be unnecessarily exposed to SARS-CoV-2 during the rule promulgation process. Further, existing MIOSHA rules do not directly address COVID-19’s spread in the workplace and employees are likely to experience an increased probability of infection at work until the protective measures in this rule are in place. Accordingly, following the non-emergency rulemaking process would undermine the effectiveness of Michigan’s emergency response to COVID-19, and expose Michigan workers to a higher risk of contracting the disease in their places of employment.

The Director, therefore, for the preservation of the public health, safety, and welfare, finds that a clear and convincing need exists for the promulgation of emergency rules as provided in section 48 of the APA, MCL 24.248, without following the notice and participation procedures required by sections 41 and 42 of the APA, MCL 24.241 and 24.242.

Rule 1. Scope and application.

These rules apply to all employers covered in the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1001 to 408.1094, for SARS-CoV-2 coronavirus and COVID-19.

Rule 1a. Application of other rules.

These emergency rules supersede the entirety of the emergency rules filed on October 14, 2020, and the extension of these emergency rules filed on April 13, 2021.

Rule 1b. Suspension of previous rule.

In the event these emergency rules issued on May 24, 2021 are deemed invalid by a court of competent jurisdiction, the previously filed rules will remain effective for the duration of the extension.

Rule 2. Definitions.

As used in these rules:

(a) “Close contact” means close contact as defined by the latest United States Centers for Disease Control and Prevention (CDC) guidelines at the time of contact.

(b) “COVID-19” means a viral respiratory illness characterized by symptoms defined by the CDC.

(c) “Known cases of COVID-19” means persons who have been confirmed through diagnostic testing to have COVID-19.

(d) “SARS-CoV-2” means the novel coronavirus identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), the virus which is the causative agent of [COVID-19](#).

(e) “Suspected cases of COVID-19” means persons who have symptoms of COVID-19 but have not been confirmed through diagnostic testing or unvaccinated persons who have had close contact with a person who has been confirmed through diagnostic testing to have COVID-19.

(f) “Fully vaccinated persons” means persons for whom at least 2 weeks have passed after receiving the final dose of an FDA-approved or authorized COVID-19 vaccine.

Rule 3. COVID-19 preparedness and response plan for all employers.

(1) The employer shall develop and implement a written COVID-19 preparedness and response plan consistent with these rules and current guidance for COVID-19 from the CDC and the Occupational Health and Safety Administration (OSHA).

(2) The preparedness and response plan shall include the measures the employer will implement to prevent employee exposure, including any applicable:

- (a) Engineering controls.
- (b) Administrative controls.
- (c) Basic infection prevention measures.
- (d) Personal protective equipment.
- (e) Health surveillance.
- (f) Training.

(3) The employer shall make the preparedness and response plan readily available to employees and their representatives, whether via website, internal network, or by hard copy.

Rule 4. Basic infection prevention measures for all employers.

(1) The employer shall promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, the employer shall provide antiseptic hand sanitizers or alcohol-based hand towelettes containing at least 60 percent alcohol.

(2) The employer shall require workers who are experiencing symptoms of COVID-19 to not report to work or work in an isolated location.

(3) The employer shall increase facility cleaning and disinfection to limit exposure to SARS-CoV-2, in accordance with the latest CDC guidance.

(4) The employer shall use Environmental Protection Agency (EPA)-approved disinfectants that are expected to be effective against SARS-CoV-2 based on data for harder to kill viruses.

Rule 5. Health surveillance for all employers.

(1) The employer shall conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms and suspected or confirmed exposure to people with possible COVID-19.

(2) The employer shall direct employees to promptly report any signs and symptoms of COVID-19 to the employer before or during the work shift.

(3) The employer shall physically isolate any employees known or suspected to have COVID-19 from the remainder of the workforce, using measures such as, but not limited to:

(a) Not allowing known or suspected cases to report to work.

(b) Sending known or suspected cases away from the workplace.

(c) Assigning known or suspected cases to work alone at a remote location

(for example, their home), as their health allows.

(4) When an employer learns of an employee, visitor, or customer with a known case of COVID-19, the employer shall, within 24 hours, notify any co-workers, contractors, or suppliers who may have come into contact with the person with a known case of COVID-19.

(5) The employer shall allow employees with a known or suspected case of COVID-19 to return to the workplace only after they are no longer infectious according to the latest guidelines from the CDC.

Rule 6. Workplace controls for all employers.

(1) The employer shall designate 1 or more worksite COVID-19 safety coordinators to implement, monitor, and report on the COVID-19 control strategies developed under these rules.

(2) The employer shall ensure that any employees, except fully vaccinated persons, remain at least 6 feet from one another to the maximum extent feasible while on worksite premises.

(3) The employer shall provide non-medical grade face coverings to their employees at no cost to the employee. Employers are not required to provide non-medical grade face coverings to fully vaccinated persons.

(4) The employer shall require any employee, except fully vaccinated persons, to wear face coverings when employees cannot consistently maintain 6 feet of separation from other individuals indoors in the workplace. However, fully vaccinated persons must continue to wear face coverings when in the healthcare setting where patients may be present and when using airplane or public transportation if required by the latest CDC guidance.

(5) Compliance with subrules (2) and (4) of this rule may be accomplished in a manner deemed effective for the place of employment. This may include:

(a) Keeping records of whether employees are fully vaccinated persons, and exempting them from subrules (2) and (4) of this rule accordingly.

(b) Posting signs in the work area reminding employees that are not fully vaccinated to wear face coverings and maintain appropriate distancing.

(c) Allowing or requiring remote work.

(d) Requiring face coverings and social distancing for all employees regardless of vaccination status.

Rule 7. Training requirements for all employers.

(1) The employer shall provide training to employees on SARS-CoV-2 and COVID-19.

(2) The employer shall provide any communication and training on COVID-19 infection control practices in the primary languages common in the employee population.

(3) The training shall cover all of the following:

(a) Workplace infection-control practices, including information on vaccinations available for COVID-19.

(b) The proper use of personal protective equipment.

(c) Steps the employee must take to notify the business or operation of any symptoms of COVID-19 or a suspected or confirmed diagnosis of COVID-19.

(d) How to report unsafe working conditions.

(4) The employer shall provide updated training if it changes its preparedness and response plan, or new information becomes available about the transmission of SARS-CoV-2 or diagnosis of COVID-19.

Rule 8. Recordkeeping requirements for all employers.

(1) Employers must maintain a record of the following requirements:

(a) Training. The employer shall maintain a record of all COVID-19 employee training.

(b) Health screening protocols. The employer shall maintain a record of health screening for each non-vaccinated employee or contractor entering the workplace.

(c) If proceeding under Rule 6(5)(a), vaccination information sufficient for implementation

(d) Records of required notifications. The employer shall maintain a record of each notification required by Rule 5 of these rules.

(2) Employers must maintain records for 6 months from time of generation.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

05/21/2021
Date


Susan Corbin
Acting Director

Pursuant to Section 48(1) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248(1), I hereby concur in the finding of the Department of Labor and Economic Opportunity that circumstances creating an emergency have occurred and the public interest requires the promulgation of the above rules.

5/23/2021
Date


Honorable Gretchen Whitmer
Governor