



DETERMINING WORK ACTIVITY UNDER EXECUTIVE ORDERS 2020-20 AND 2020-42

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The executive orders on the restriction of places of public accommodation (EO 2020-20) and on the suspension of activities not necessary to sustain or protect life (EO 2020-42) indicate what businesses and entities must close to the public and which work-related activities are prohibited. Library boards and directors must review work duties in order to determine whether they meet the criteria state within the EOs, and which, or if any, staff can work physically in the library.

It is important to note as libraries consider how to allocate tasks and whether to assign workers to in-person work, that the intent of EO 2020-20 and EO 2020-42 is to LIMIT PERSONAL CONTACT and KEEP PEOPLE AT HOME. The intent behind the exceptions that permit some work on site is for employers (including libraries) to limit employees working on site to the very minimum number needed to preserve the library's essential operations. Keeping these tenets in mind may help libraries determine which tasks are truly "Minimum Basic Operations," and which are not.

This information sheet is intended as a tool to assist in clarification and decision making for Public Library Directors and Boards. It is not intended as legal advice. Library Boards and Directors should consult with their library attorneys when determining a plan or policy for their libraries.

The information in this sheet refers to specific sections of the pertinent Executive Orders (EO). For your convenience here are links to the orders discussed, as well as links to additional information on this topic:

EO 2020-15 - Temporary authorization of remote participation in public meetings and hearings and temporary relief from monthly meeting requirements for school boards:

https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522173--,00.html

EO 2020-20 - Temporary restrictions on the use of public places of accommodation:

https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522576--,00.html

FAQ: https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-522585--,00.html

EO 2020-42 - Temporary requirement to suspend activities that are not necessary to sustain or protect life:

https://www.michigan.gov/documents/coronavirus/EO_2020-42_Emerg_order_-_Stay_Home_Stay_Safe_reissue_final_signed_686575_7.pdf

EO 2020-21 has been rescinded by EO 2020-42. However, the FAQ link and the overview linked below may be helpful as a tool in making determinations, as the language affecting "minimum Basic Operations" has not changed.

EO 2020-21 - Temporary requirement to suspend activities that are not necessary to sustain or protect life (Rescinded by EO 2020-42)

EO 2020-21 FAQ: https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98455-522631--,00.html

Overview of EO 2020-21 available on the Michigan.gov/coronavirus site
<https://www.michigan.gov/coronavirus/0,9753,7-406-98159-522649--,00.html>

1. Can Public Libraries continue to have staff work at the library?

EO 2020-42 restricts the employees who can physically work within the library building. Although EO 2020-20 permitted all workers to continue working within the library as long as it was closed to the public (see EO 2020-20 section 1(h)), EO 2020-42 overrules this portion of EO 2020-20 because EO 2020-42 states in section 13 that the provision that is most restrictive governs.

Under EO 2020-42, Libraries may designate particular staff members to work within the library building AS LONG AS the following parameters within EO 2020-42 are met:

- The work to be performed is considered “necessary government activities” as stated in section 6 of EO 2020-42 (since Public Libraries are government entities), and further described in section 4(b).
- The number of employees permitted to work should be the LOWEST number of staff required to accomplish the necessary tasks (see section 10(b)).
- The library must develop a Covid-19 preparedness and response plan consistent with the OSHA Covid-19 workplace guidance, and available at the worksite or headquarters. See section 10(a).
- Remote work should be promoted to the “fullest extent possible” (see section 10(c)).
- The library observes all necessary social distancing and sanitizing and PPE requirements within the workplace as described in section 10 of EO 2020-42.

Remember -The intent is to keep staff from working onsite.

2. How is a “necessary activity” determined?

Section 6 of EO 2020-42 discusses government services and workers. Section 6(b) identifies “necessary government activities” as including “minimum basic operations,” and refers to section 4(b) for further explanation. Section 4(b) clarifies that “minimum basic operations” include activities that

“maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.”

In other words, activities that could seriously negatively affect the operations and/or value of the operation/business, if they were not performed.

The purpose of EO 2020-42 is to keep people home, so if the task is not critical to maintaining the basic library, then it is likely that the task should be reconsidered. Most “normal” library duties such as cataloging, collection development, shelf maintenance, etc., would not be considered “minimum basic operations” in the spirit of this EO.

If uncertain whether a task is a “minimum basic operation,” consider section 1 of EO 2020-42:

This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.

By inserting the phrase “construed broadly,” the EO is indicating that, if there is a question or an uncertainty as to whether a task is necessary or a “minimum basic operation,” the decision should err on the side of NOT designating it a necessary task or “minimum basic operation.” In other words, if it is unclear, then the task probably ISN’T necessary for purposes of this EO.

It may also be helpful to consider the context of the current situation. For example, currently funerals and other important public gatherings are being restricted or prohibited, and most businesses and local government entities have severely limited in-person activity. Refer to sections 10 and 11 of EO 2020-42 to see additional limitations imposed on entities conducting in-person operations. Libraries struggling with this may wish to check and see what “minimum basic operations” are being conducted in their local government offices.

It may also be useful to review the overview of EO 2020-21 available on the Michigan.gov/coronavirus site <https://www.michigan.gov/coronavirus/0,9753,7-406-98159-522649--,00.html>. Although EO 2020-42 rescinds EO 2020-21, the intent and interpretation regarding “minimum basic operations” remains consistent between both EO’s.

Libraries should consult their lawyers if they are unsure of which tasks could be considered “Minimum Basic Operations” under EO 2020-42

3. If staff are at the library completing necessary tasks, can they also complete other, non-service tasks while already at the library?

See sections 1 and 4(b) of EO 2020-42. Because the goal of EO 2020-42 is to reduce the time that people are away from home, staff should likely only perform the necessary minimum basic operation tasks while at work. Being at the library to perform specific minimum basic operations does not necessarily mean that a staff member must be in the library for an entire shift – they should only be in the library for the amount of time it takes to complete the minimum basic operations tasks.

4. Can staff perform non-necessary tasks remotely?

Absolutely. If the library is paying staff and staff are able to work remotely, the supervisor can assign work as usual. If the work entails shipping materials to patrons, the library should contact their county health department to verify that the activity is within the emergency guidelines.

5. Can Board Members use the library while it is closed?

No, unless they are performing a “minimum basic operation.” For example, if a board member must sign or co-sign checks, the necessary board member can go to the library to perform this “minimum basic operation.” A Board meeting or activity or discussion is not a “minimum basic activity” because it can be performed remotely as per EO 2020-15. See Q. 6., below

6. Are Board Meetings “necessary tasks?”

Yes, and no. While it is true that public board meetings are crucial to the operation of public libraries, the fact that it is possible to have these public meetings remotely likely removes them from the definition of “minimum basic operation” for purposes of an in-person activity under EO 2020-42. EO 2020-15 https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522173--,00.html provides library boards with the temporary ability to hold public meetings remotely using a videoconference or meeting product, or, by utilizing a conference calling platform. Boards should review EO 2020-15 as well as this information sheet available on the Library of Michigan’s webpage for resources and information on conducting public meetings virtually.

https://www.michigan.gov/documents/libraryofmichigan/CONDUCTING_A_REMOTE_PUBLIC_LIBRARY_BOARD_MEETING_685666_7.pdf

If a board is unable to conduct a necessary meeting remotely, they should consult with their library attorney to determine the proper course of action under the EO(s) for their situation.

7. Can Board meetings be held in person if social distancing is followed?

No, see Q.1, Q.5, and Q.6, above. Not only does EO 2020-42 limit gatherings of people to ones involving only members of the same family, EO 2020-20 bars members of the public from entering the library (and most other public buildings). Therefore, board members themselves would not be able to congregate in the same physical spot, let alone be able to adhere to the public participation requirements.

8. Are there penalties for libraries which do not comply with the Executive Orders?

Yes, Section 6 of EO 2020-20, Section 14 of EO 2020-21, and Section 17 of EO 2020-42 each indicate that “willful violations” will result in a misdemeanor charge, which, under the Michigan Penal Code, MCL 750.01 et, seq. means that a court could levy fines and/or jail time. The Michigan Attorney General has indicated businesses can be liable for a \$500 fine and up to 90 days of jail time. https://www.michigan.gov/ag/0,4534,7-359-98784_98817-523169--,00.html

The Michigan Department of Health and Human Services has issued an order mandating a \$1000 civil fine for violations of the EOs. Staff who feel required to work in violation of an EO can report their employers to law enforcement.

Any library unsure if whether their work determinations fall within the requirements of EO 2020-20, or EO 2020-42 should consult their attorneys for advice.

9. Where can a library obtain assistance or direction with questions on what is or is not appropriate?

Library Attorney – Always a good resource for determining appropriate plans or action. If a library needs an attorney, contact membielac@michigan.gov for a list of Michigan attorneys that work with libraries.

County Health Department- They have high involvement with interpretation and enforcement regarding the Executive Orders. They are well suited to assist in determining whether actions that comply with the intent of the EO’s. To locate your county health department, https://www.michigan.gov/mdhhs/0,5885,7-339-73970_5461_74040---,00.html

Library Cooperative Director- To locate your library cooperative, <https://micoops.info/>

Library of Michigan – https://www.michigan.gov/libraryofmichigan/0,9327,7-381-88855_89053_89064---,00.html

Michigan Library Association – <https://www.milibraries.org/>

Clare Membiela
Library Law Consultant